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TRANSCRIPT OF PROCEEDINGS

O/N H-896297

THE HONOURABLE K. HAYNE AC QC, Commissioner

**IN THE MATTER OF A ROYAL COMMISSION
INTO MISCONDUCT IN THE BANKING, SUPERANNUATION
AND FINANCIAL SERVICES INDUSTRY**

MELBOURNE

9.45 AM, TUESDAY, 22 MAY 2018

Continued from 21.5.18

DAY 21

**MS R. ORR QC appears with MR M. HODGE QC, MR A. DINELLI and MS E. DIAS
as Counsel Assisting with MS C. SCHNEIDER**

MS P. NESKOVCIN appears with MR J. ARNOTT for Westpac

DR M. COLLINS QC appears with DR M. RUSH and MS E.A. BENNETT for ANZ

5 <CROSS-EXAMINATION BY MR HODGE

THE COMMISSIONER: Yes, Mr Hodge. I understand we've got some issue with
10 the screens with the public displays.

MR HODGE: That's right, Commissioner. I'm told there's some sort of power
outage that has meant the screens have gone down for what the public can see, but
the computer system is still working, so the parties and the witness and you can still
15 see the documents.

THE COMMISSIONER: Yes. That's unfortunate that we haven't got the public
screens up, but I think let's go on for a time and see where we get to. No doubt
everybody is running around like a bee in a bottle out the back trying to fix it, but
-- --

20 MR HODGE: Yes, Commissioner.

THE COMMISSIONER: -- -- no doubt it will happen.

25 MR HODGE: Thank you.

THE COMMISSIONER: Yes.

MR HODGE: Thank you.

30 THE COMMISSIONER: Mr Welsh.

MR HODGE: Mr Welsh, we were speaking yesterday afternoon, I believe, about
the third party security policy that Westpac has. Do you recall that? That's tab 5 of
35 the exhibits to your statement?---Yes.

And we had looked or were looking on page 216 at what's to be done in relation to a
category B guarantor?---Yes.

40 And we looked at some words and some parts of this, but I just wanted to know one
further part. You see that one of the instructions to the Westpac bankers under
category B guarantors is:

45 *Do not give predictions, particularly predictions of comfort, that the borrower
is able to trade or pay off their debts.*

?---Yes.

And you're aware – or you've read the statutory declaration that was made by Ms Flanagan in 2014 for the FOS dispute?---Yes.

5

And I want to just take you to that document. It's WBC.407.001.1003. And if we go to page .1004. And you will see at the top of the page that Ms Flanagan is describing her recollection of what happened at the meeting at the Westpac branch. This is her description, three and a half years ago. And you see in paragraph 14 she says:

10

I said to Michelle –

Michelle is the banker. Is that right?---Yes.

15 Continuing:

I said to Michelle words to the effect of –

And I will leave out the daughter's name:

20

Can my daughter cover the loan repayments? Michelle said, "Yes".

?---Yes, I see that.

25 And, if that had occurred, would that be a prediction of comfort being given by the banker?---Yes, if that had occurred.

And, as I understand it, Westpac has no notes of the meeting that happened between the banker and Ms Flanagan on about 8 December 2010?---Yes, that's correct.

30

And Westpac hasn't spoken to the banker about the meeting on 8 December 2010?---Yes, that's correct.

So Westpac has no reason to think this didn't occur?---No, that's not correct.

35

All right. And what is the reason that you think it didn't occur?---Sorry. I thought you said Westpac has no reason.

That's right. It has no reason to think it didn't occur?---Well, that's Ms Flanagan's statutory declaration.

40

Yes?---Yet, as you've pointed out, it's clear in the policy. It's also clear in the approach when you sign the guarantee, the information that she reads out. You know, so it's – it's a – it's clear. So we, obviously, have a difference in – in view.

45

Well, let's just understand the nature of that difference in view. Westpac has a policy. My question is can you be certain the policy wasn't breached? And your

answer is, “We have a policy, therefore it wasn’t breached.” Is that a fair summary of your evidence?---Yes, you could interpret it that way.

5 And yesterday, when we were having some – or I was asking you some questions at the beginning, you expressed a view that there was no technical problem with the taking of the guarantee. Do you recall that?---Yes, I do.

10 And, it was remiss of me not to ask you, what do you mean by that? What do you mean there was no technical problem with the taking of the guarantee?---But – could I just expand a little here? Would you be - - -

Yes?--- - - - okay if I did that?

15 Yes?---Thank you. This is a little bit of an unusual one, because we’re focusing on one – one meeting here. I read the file and looked across the – the full four months. And why I used the words technically when I come back to it is – as you would have seen in early August, the partner signed up for the franchise. In mid-August, the partner produced the business plan. And then in mid-September there was a business finance request. And in that finance request there was a note that said that the
20 the security would be the house of Ms – Ms Flanagan. And then in early October there was a valuation which we heard Ms Flanagan acknowledge a valuer came along. Then there was also a cashflow produced that – that showed the financials. And then we went through a number of steps with our banker and our credit officer asking a few clarifying questions. Then there was the meeting on the 8th, where from the
25 records that I can see, we’ve – we went through our guarantee. And, as I heard Ms Flanagan say yesterday, it was read out to her, which was part of our – you know, which was the requirement and the right thing to do. And then our records also show that – that on the – the 10th of the 12th she went to an independent lawyer and got independent legal counsel. So, when I stand back from that as a banker and look
30 through that four months process, it looks pretty reasonable process to – to work through, just on those facts of those dates. So that’s – that’s why, you know, when you – when you asked me a question of, you know, would I have liked to have seen notes of that meeting, I would have liked to have seen notes of that meeting. So that’s why I said technically correct.

35 I am not sure that really answers the question of technically correct. And we will come back to that in a moment. What is the document that you’re reading from there, Mr Welsh?---The – it’s just my witness statement. I just put a few notes down this morning to make sure I got the timing right.

40 I see?---Scribbled when I got in early here.

I see. All right. And that was what you were reading out to us then, the notes that you’ve written down?---Just my run – run of notes.

45 All right?---Pretty messy handwriting, though.

And – that’s all right. We will take a copy of that at some stage. Can I then just go back to this question of technical breach. The issue of whether it was technical or not was technical in terms of following the process to obtain a guarantee. You understand that’s the particular process we’re talking about. You have a process that you have to go through in order to obtain a guarantee?---Yes, that’s correct.

And the question that I asked you yesterday was about whether or not you were satisfied that the process was followed in this case. And was - - -?---For – for just – was it limited just to the guarantee?

Well, perhaps you miss – perhaps we were at cross-purposes?---Yes.

Are you talking about whether the loan – whether there was any problem at all with the loan being made?---Yes, that – yes, I was referring to – across the - - -

All right. So maybe let’s break this down into stages. You understand that at the time, under the Code of Banker Practice, it was required that a banker exercise, effectively, due care and skill of a reasonable banker?---Yes, I do.

All right. And is it the case that you’re satisfied, in relation to the making of the loan – let’s set aside the guarantee, but just the making of the loan – that the requisite level of skill and care was exercised?---Yes, I do.

And the references you just made to the history of the loan application, the business plan, the franchise agreement, the profit and loss statement, those are all things that would have been relevant to the banker in making the decision as to whether she should make the loan in the first place?---Yes, that’s correct.

And you’ve reviewed those documents. Is that right?---Yes, I have.

And you’ve exhibited them to your statement?---Yes.

And, having reviewed them and exhibited them to your statement, you’ve satisfied yourself that it was appropriate to make this loan. Is that right?---Yes.

And have you discussed that, also, with anybody else within Westpac? Has anybody else also reviewed these documents in preparation for you giving evidence to, effectively, check your view?---Yes.

And who are those people?---I got one of my senior credit people to – to look through this.

Okay. And that’s somebody who reports to you. Is that right?---No, not correct.

I’m sorry. Somebody separate from you?---Yes.

And who looked through it and satisfied themselves that it was appropriate to make the loan?---Someone in our credit chain. So that's at what we call our second line. So it's not the first line. So that's the credit chain for SME lending.

5 All right. And then there's a second stage to this, which is the taking of the guarantee from Ms Flanagan. And there was a process that Westpac had to go through – required its own bankers to go through, before they would take a guarantee. Do you agree with that?---Yes, I do.

10 And you've also reviewed the documents and satisfied yourself that that process was followed in this case?---Yes, I have.

And, again, have you spoken to anybody else within Westpac to, effectively, check that view in preparation for giving evidence?---Yes, I have.

15 And who are those people?---I have also asked our legal team to look at it to make sure it's right, and also the – the credit team, because this is part of the credit policy, this approach, so - - -

20 All right. And I may have misunderstood you then yesterday, because I thought the point you were trying to make was, having seen Ms Flanagan give evidence, you feel some discomfort at Westpac having taken a guarantee from her, but you're satisfied that the technical process had been followed in this case. Was that not the point you were trying to make?---Yes, I felt, obviously, some discomfort of seeing a – you
25 know, elderly person in that situation. Yet, I suppose I went to the technical side, looking across the – the whole of this, because we – my view of the situation is we allowed a mother to back her – back her child. And that's – that was part of – you know, that's a big part of backing small businesses, where parents support their children, as we heard from Ms Flanagan yesterday. And in this situation it has
30 turned out in a very sad way.

And it follows from that, I take it, that your view is this doesn't point to any problem with Westpac's process, the fact that a guarantee was taken from Ms Flanagan?---It doesn't point to our practice at that point in time of taking the guarantee.

35 Sorry. It doesn't point to a problem with that practice?---A problem. Sorry. Sorry. Yes. There's no problem.

40 Yes. And has your practice changed since 2010 in relation to taking a guarantee?---A few minor changes.

All right. But nothing in any substantive way that would affect whether or not you took a guarantee from Ms Flanagan?---Correct.

45 Now, I want to take you, then, to the documents that you referred to. Perhaps if we start with the loan application. That's at tab 11 of your documents.

THE COMMISSIONER: Just before we come to that, Mr Hodge, is that stat dec in evidence?

MR HODGE: It's already in evidence, Commissioner. It's - - -

5

THE COMMISSIONER: Already in evidence. Thank you.

MR HODGE: - - - exhibit number 1 to Ms Flanagan's - - -

10 THE COMMISSIONER: Thank you.

MR HODGE: - - - statement.

15 And I think you've got the hardcopy of it. It's also up on the screen for you - - -?---Thank you. It is.

- - - Mr Welsh?---Yes.

20 So this is the loan application. And the point you made about the loan application was this was signed on 23 September 2010. And we can see that if we go to page 7.0061?---Yes, we can.

25 And it appears to have been signed by both the daughter and the daughter's partner?---Yes.

And you can see that if you go back to page 5 of the document, .0059. It's identifying who the principal – if we go back to .0059?---Yes.

30 It is identifying who the principal director is, which is the partner, and the spouse, which is the daughter. Do you see that there? You should have an unredacted copy of it?---Yes, I do. Yes.

35 It may make it easier. And then, if we go back to the front page of that document, .0057. You will see what's said is the business requirement is \$165,000. And the own contribution is \$5000. Therefore, the total finance required is \$160,000. See that at the top of the page?---Yes, I can.

40 And, having reviewed the documents, what do you understand the \$160,000 is for?---For the purchase of three Poolwerx franchisees.

I see. So this is, as you understood it, the purchase price of the franchises?---And some working capital and - - -

45 And how much working capital?---Well, in this document it says 8000.

All right. You've reviewed the documents?---Mmm.

Have you in a later document been able to identify how much was to be working capital?---I – no, I didn't look to that.

5 All right. And, just if we start with this, then, this document doesn't seem to say what the purchase price will be of the three franchises. Do you agree with that?---No, I don't – yes, I think that – that's correct.

10 And do you know what the purchase price was of the three franchises?---I don't 100 per cent.

When you and somebody senior in your credit team satisfied yourselves that it was appropriate to make this loan, did you discuss how much the franchises were actually going to cost?---No – no, I didn't.

15 All right. And that – was that just irrelevant as to whether it was appropriate to make the loan?---No, they – the partner identified that was the cost. And I had no reason to doubt that, when you look through the – the transaction and what was paid.

20 Right?---So – so it wasn't – sorry – this wasn't something - - -

It's all right. We - - -?--- that I thought to explore, that it would be more than that.

25 Your Honour, I'm not sure we've yet quite got to the root of this. When you say the partner identified that that was the cost, the cost of what?---Sorry. That was the amount to pay for the right for those franchise areas, and some working capital, is – is my understanding.

\$160,000 in total?---Yes.

30 And when you said working capital, I thought you had picked that up from this statement here, "purpose of finance", where it says \$8000 working capital?---Yes, I did.

35 Okay. But you had it in your mind before today that this loan was to buy the franchise and to pay for some working capital?---To set up the – to be able to have the rights to be able to operate the franchise, yes.

40 And the total amount for the cost of the rights, plus working capital, was \$160,000?---And a bit of equipment. I think this says 163 minus – sorry – 165 minus his own 5000. So I'm sorry if I'm misinforming you.

45 No. No. That's fine. You thought that the purchase price for the three franchises plus working capital, the total value of that was 165,000. Is that right?---That – that is right.

And you see that the other thing that's said here is that it's going to include the purchase of two vehicles and stock and equipment. Does that also fall within the \$165,000, as you understood it?---Yes, it does.

5 Did you turn your mind to that before I pointed this out to you now?---I have read it. It wasn't something that I was focused on.

I'm just trying to understand, when Westpac comes to assess a business loan, is it not important to start with understanding what is the loan for with some precision?---It's
10 very important.

All right. And you've looked at it and your credit manager has looked at it. And can I suggest, sitting here today, having prepared to give evidence at this Royal
15 Commission, you're very vague as to exactly what this \$165,000 was going to be used for, aren't you?---Apologies for coming across vague. It's not intended. It's probably normal practice in my experience. You know, I read that quickly, I looked at it and said 160,000 to buy a pool franchise seems about right. Now, you're going to get some equipment, and where do you get the truck? And it's in the asses and
20 position. It wasn't my normal practice to sort of labour on that, because you do a reasonableness test to look there. And that's the reasonableness test. So apologies on being vague, but it's not something I spent a lot of time forensically looking at, shall I say.

That's all right. But let's make sure we understood this. So the approach you took to
25 this was you looked at it and, based on your experience with pool franchises, you thought \$160,000 sounds like a reasonable price to start a pool franchise?---I had to inform myself. I'm certainly not an expert on pool franchising.

And how did you inform yourself as to the ordinary price of a pool
30 franchise?---There was – I asked some of the team around what the – what the franchise, you know, would have been at that sort of level, because, as you would expect, with – not all franchises are equal. Some come with shops and a building and those sorts of things. This was a mobile franchise. And, you know, 160,000. And I – you know, I also looked at the revenue – the forecasts there to sort of get a
35 reasonableness test on that. So, you know, I applied a few reasonableness assessments.

All right. I take it, when you say that, that you had to talk to people and attempt to
40 figure it out by looking at the profit and loss, that's because in your review of the documents you couldn't find anything that actually benchmarked the price of this franchise against other franchises from that – I'm sorry. You couldn't find any document from the time that benchmarked the price of this franchise against other franchises?---That's correct.

45 And you couldn't find any document that actually showed you with specificity how this \$160,000 broke down?---That's correct.

All right. And if we go to page .0058. You see at the top of the page there's a section which is About Your Business?---Mmm.

5 And there's two boxes that I want to specifically direct your attention to. One is:
Number of full-time employees.

The other is:

10 *Number of part-time employees.*

Do you see that?---Yes, I do.

15 And the number of full-time employees is zero?---Yes, it is.

And the number of part-time employees is also zero?---Yes, it is.

20 And that's the – as you've noted, this is part of the loan application signed on 23 September 2010?---Yes.

25 And – but you were aware of that, weren't you? You made the point to me in the – in the recitation of facts that you had written down before you came into the hearing room today, you have noted that there was a franchise agreement signed on 6 August, and then there was a loan application made on 23 September. You're conscious of these dates, aren't you?---Yes, I am.

And do you remember when you reviewed these documents having noticed the fact that the loan application said there were no employees?---Yes, I do.

30 All right. And what did you think of that?---I noted there were some, you know, imperfections. And I – and I will – I suppose – I noted it, but didn't labour on it. And I'm happy to expand why.

35 Sure. Expand on it, please?---Often, as a deal is being built up, you – you start with a – you know, an application and then there's a discussion and you explore it. And the deal moves around. So one – at the start of a deal from one bit of paper, it's not – it's not a pure linear end at the end, that's exactly what happened, because – that's exactly the final outcome, because typically you find the deal reshapes and you look at different options, and there are different options that they may have talked
40 through. So you – the deal evolves. So it's not always something that's in the original documents carries all the way through, but – lots of things do, but not everything.

45 I'm not sure I really understand how that's an expansion or explanation of your approach to the fact of the loan application showed there were zero employees. So let's attempt to just focus on that. You noted there were no employees?---Correct.

And did you think or make any observation as to what that might mean for the deal that was built?---Yes, I did.

5 And what was that?---Well, in the deal build request form and in – which was at a later date, and also the submission, it does say that [REDACTED] will - - -

Yes. It says [REDACTED] is working for the business, doesn't it?---Yes, it does.

10 And - - -

THE COMMISSIONER: Are we trampling on - - -

MR HODGE: I'm sorry. We will have to cut the name.

15 THE COMMISSIONER: - - - confidentiality orders and so on?

MS NESKOVCIN: I think that's why Mr Welsh paused. The name is confidential.

20 THE WITNESS: Sorry. Apologies.

THE COMMISSIONER: Can I just draw to the attention of the media. I'm sorry. We've redacted and made non-publication directions about the names of the individuals concerned. They haven't been given notice of what we're diving into, and that's why. So I'm sorry to have to draw it to your attention, but it's best if I do.
25 Go on, Mr Hodge.

THE WITNESS: Apologies, Commissioner.

30 MR HODGE: Thank you, Commissioner.

The daughter – I'm sorry – when you referred to the daughter before, it's not the daughter who was working – well, the daughter was said to be working for the business. That's one point. Is that right?---That's one point.

35 And you're noting that this application is inconsistent with other documents that show that the daughter was working for the business. That's the point you're making?---Yes.

40 And you realised that before you came to give evidence today? You observed that inconsistency?---Yes.

And you didn't refer to that in your statement?---Well – yes, that's correct.

45 And it's not just the daughter who was said to be working for the business, was it?---That's correct.

Who else was said to be working for the business in Westpac's documents?---Ms Flanagan.

5 All right. And you also observed that before you came to give evidence today?---Yes, I did.

But you didn't explain that – note that inconsistency in your statement?---That's correct.

10 And, instead, if we go to paragraph 75 of your statement on page 16, you said:

15 *In respect of Ms Flanagan's status as a guarantor for the loan, the deal build report noted Ms Flanagan as being employed on a part-time basis by the borrower since 30 July 2010. It also noted that Ms Flanagan would be a shareholder of the business and would receive a wage and dividends.*

That was what you said in your statement?---Correct.

20 And so, I just want to understand, at the time that you prepared this statement, you had already recognised the inconsistency between what was in the loan application and what was in the deal build report?---Yes, I did.

25 And you knew that a particular reason for saying Ms Flanagan would receive a wage from the business was that that would mean that she had some direct benefit from the business?---In addition to the fact she was a share – was going to be a shareholder and had the right to be able to receive, you know, dividends, is what – what it said.

30 Yes. But Westpac wouldn't have accepted a guarantee from Ms Flanagan unless she had a direct interest in the business. Is that right?---There had to be a commercial benefit.

To Ms Flanagan?---Yes.

35 And the deal build report identified two commercial benefits. One was – not specifically. This is what you've pulled out in your statement. One was the wage and the other was the dividend. Is that right?---That's correct.

40 And you, in your statement, noted that the deal build report had said that Ms Flanagan was employed on a part-time basis, and was – would receive a wage. That was one of those direct benefits?---That's what it said, yes.

That's what you said?---Yes. That – well, sorry - - -

45 You put in your statement that this is what the deal build report says?---Correct. Yes.

And you knew that the deal build report was inconsistent with the loan application in that respect?---Yes, I did.

5 And you didn't identify that?---No, I didn't.

And why not?

MS NESKOVCIN: Commissioner - - -

10 THE COMMISSIONER: Yes.

MS NESKOVCIN: - - - Mr Welsh's statement was prepared in response to Rubric 3-12. He was not asked to address any deficiency in the loan process. There was a separate request for a general explanation about loan process applications, but not particularly in relation to this.

15 THE COMMISSIONER: No doubt all this is so, Ms Neskovcin. What's the point you want to make?

20 MS NESKOVCIN: Because he is being challenged about not putting something in his statement, but he wasn't asked to specifically address this issue.

THE COMMISSIONER: Yes.

25 MR HODGE: I think if he wants to give that explanation as to why he did it, then he is free to do that, Commissioner, is my submission.

30 THE COMMISSIONER: Yes. Well, you have heard what your counsel have said, Mr Welsh. Do you want to take up the life buoy that was thrown to you?---I think I will.

MR HODGE: So the reason you left that out was because you hadn't been specifically asked to address it. Is that right?---Apologies for pausing here, but it – this – normally – maybe if I – normally there – there are sometimes a few – there are imperfections as the deal gets – goes through. And – and I've seen a number of those. You know, this is an example of one. I chose not to comment on all of – all of those.

40 And when you say - - -?---On those. Sorry.

When you say imperfections, does that mean failures to comply with Westpac's policy?---No, it doesn't.

45 Does that mean failure to exercise due care and skill as a banker?---No, it doesn't.

Okay. So if we just go back to the loan application, which is tab 11, WBC.407.001.0057. And if we go to the – to page .0058. And you will see the security offered for this loan?---Yes, I do.

5 And the security that was offered for the loan was Ms Flanagan's home?---Yes, it was.

And – so, just so we can make sure for the benefit of the Commissioner we understand this, if we run through these facts, on 23 September 2010 an application
10 for a business loan is made by the partner – the daughter's partner. That's the first fact?---Yes.

At that time, Ms Flanagan was not employed by the business?---That's correct.

15 At that time, Ms Flanagan was not a shareholder of the business?---At that time, correct.

Nevertheless, her property was being offered as security for the business loan?---Yes.

20 Are those facts, just taken by themselves, that you expect ought to have caused your banker to be on high alert about why it was that Ms Flanagan's home was being offered as security?---No.

Notwithstanding that, on the information it's being offered as security,
25 notwithstanding that she has no direct interest in the business?---I'm not sure of the question.

On this loan application, it's quite apparent, if it's read with the company search, which we will come to, Ms Flanagan has no direct interest in the business. Do you
30 agree?---Yes, I do.

And isn't that exactly the situation that Westpac's policy says Westpac ought to exercise extreme caution in?---For the taking of guarantee?

35 Yes?---Yes. Yes, indeed.

And is there anything, then, that suggests to you that Westpac exercised extreme caution in this case about taking a guarantee?---At – at which point? Are you asking
40 at this point right here or - - -

At any point, is there anything that indicates to you in the documents you have reviewed that Westpac exercised extreme caution in relation to the taking of the guarantee?---Yes, there is.

45 And what is it?---That at the time of taking the guarantee, we – we followed our process, including – that included the – the bundle of documents that we needed to provide to Ms Flanagan. We completed the checklist of what we read out to her, and

we completed the subsequent checklist, and we asked her to get external legal advice, which our evidence showed she did.

5 All right. So that's – just so I understand, the extreme caution that you've identified is that at the time that Ms Flanagan was signing up the guarantee, you believed that documents were provided to her?---I do.

And a checklist was completed?---Yes.

10 And she was told to get independent legal advice?---Yes.

And, as you understand it, she received independent legal advice?---Yes.

15 All right. And then if we go, then, to tab 18 of your volume, which is WBC.407.001.0228. And you will see this is the valuation that was performed on Ms Flanagan's home?---Yes.

20 And it's dated 5 October 2010. Do you see that at the bottom of the page?---Yes, I do.

And you will see it was addressed to Ms Fletcher, the Westpac manager or Westpac banker?

25 THE COMMISSIONER: Well, again, have we redacted her name?

MR HODGE: No, Commissioner.

THE COMMISSIONER: No, we haven't. All right. Okay. Back in the box.

30 THE WITNESS: Yes, I do.

35 MR HODGE: And that must mean that by 5 October Ms Fletcher had instructed [REDACTED] – I'm sorry – we better cut that – that is redacted – had instructed the valuer to obtain a valuation? I will repeat that question?---Sorry.

By 5 October 2010, Ms Fletcher had instructed the valuer to obtain a valuation of Ms Flanagan's property?---Yes.

40 And do you agree that, as at that date, Ms Flanagan was not a shareholder in the business?---Yes.

And that Ms Flanagan was not an employee of the business?---Yes.

45 And that doesn't cause you any concern, that Ms Fletcher was getting a property of a parent valued at a time when she must have known that parent had no direct interest in the business?---She did not – she did not have a direct interest at that – at that – on 5 October.

Yes. When the - - -?---Yes.

By which date Ms Fletcher had sought to have the property valued?---She did not have that at that point in time, yes – did not have an interest.

5

And my question is that doesn't cause you any concern. Is that right?---That's right.

Why not?---Because this is part of the building up of a deal. You see in later notes that – in the submission that she was going to become a shareholder and she became a shareholder at a later date. These – you know, my experience gain in dealing with business – and this is why there's some complexity. Often in it there's a number of different things going on at the same time. It's not a linear step by step by step by step. There's a number of things typically happening in it as any deal gets built up.

10

All right. And so, just so that I can make sure that I have understood, the thing that you had latched to is at some point Ms Flanagan was recorded as a shareholder. Is that the thing that is the critical question of whether or not Westpac should or shouldn't have taken this guarantee?---In the submission she said she was going to be a – a shareholder.

20

She didn't say that. Ms Flanagan never said that. Sorry. I just want to be clear about this. When you say in the submission, "she said", who do you mean? You don't mean Ms Flanagan; you mean the Westpac banker?---Our banker.

25

All right. But she didn't say that as at 5 October 2010?---Correct.

So the critical thing from your perspective is that, because in the future she became a shareholder, there's, therefore, no concern about what happened at the earlier point in time?---That's correct.

30

All right. And can we then go to – can we then go to tab 14, which is the business plan. So this is a business plan. You will see it's dated 20 August 2010. Do you see that?---Yes, I do.

35

And you've reviewed this document before?---Yes, I have.

Commissioner, can I just note we believe that there was a non-publication direction made with respect to not the whole document, but just the name of the franchise. So it just means that it hasn't been – the document hasn't been properly redacted. As it is, the only people who can see the document – or ought to be able to see it, are you, Commissioner, the witness and Commission staff.

40

THE COMMISSIONER: So business name trading as something or other, the - - -

45

MR HODGE: If the document – well, the document has just been taken down. I don't think the document needs to be taken down, because it's only for the witnesses,

but – there we go. It’s redacted now. There’s a black box. What is behind the black box is the name of the franchise.

5 THE COMMISSIONER: Yes. Just while we’re interrupted, at 11 o’clock I’m going to adjourn so that a tech can come and look at the feed to the screen, see if we can get the public screens back up at 11. So can you order your affairs – counsel order their affairs on the footing that at 11 I will adjourn.

10 MR HODGE: Thank you, Commissioner.

So this is the business plan dated 20 August 2010, Mr Welsh?---Yes, it is.

15 And you see – it’s redacted on the screen, but you’ve got the unredacted copy, I hope, in front of you, which has “trading as” and the name of the franchise and then the name of the franchise area?---Yes.

20 You can see that there? All right. And then, if you go over the page – again, we might bring that down and we will just do it off the documents that you and I have. So at the top it identifies the name of a different franchise area. Do you see that?---Yes.

And you can see that, also, if you look over to the subsequent page, that it’s also a different franchise area?---Yes.

25 And if you also look on page ending .9172, which is the second page of the document, you will see the description – and I will substitute the names:

30 *Partner is responsible for general management business development and service manager, while daughter manages the administration and accounts. We are currently looking to employ an on-road pool technician. And we will be looking to appoint a shop manager when we reopen the retail hub in the near future.*

35 Do you see that there?---Yes.

And there’s no reference to Ms Flanagan being employed there, is there?---That’s correct.

40 And, if we go over to page .9175, which sets out the business structure and staff. And you will see it identifies the partner as the franchisee, the partner as the service manager, a vacancy for the store manager, the daughter as the finance and admin officer, and a vacancy for the service technician?---Yes, I do.

45 And there’s no reference to Ms Flanagan being an employee?---That’s correct.

And, can I suggest, in your review of the documents, you've seen nothing except the deal build notes by the banker to suggest that Ms Flanagan was an employee of the business?---That's correct.

5 And all of the primary documents show something contrary to that, which is that Ms Flanagan was not an employee of the business. The loan application shows there were no employees of the business. Do you agree?---Yes, I do.

10 This business plan records two employees and two vacancies, none of which are relevant to Ms Flanagan?---That is correct.

And does that inconsistency raise for you any concern about the process by which Westpac went about building this deal?---No, it doesn't.

15 Can we go, then, to the franchise agreement, which is tab 15. I suspect that's being redacted in real-time, but you will see – I want to point out a few details to you which are – do you see at the top of the page this has a fax header or part of a fax header?---Just which page do you want me to - - -

20 I'm sorry. On page .9118, the top of the page in your exhibit 15?---Yes. Yes, I do see that.

25 And – so this document, the franchise agreement, appears to have been faxed as part of a larger document?---Help me out. How are you reading that?

You see it's page 14/33 in the top right corner?---I do see that, yes. Thank you. Sorry.

30 So it appears as if this was faxed as part of a 33 page document on 19 October 2010?---On that evidence, yes.

35 And can I suggest – and I will come back to why I suggest this in a moment – that what appears to be happening is that the relevant Westpac branch is faxing this to some part of the credit assessment team. Does that sound right?---I don't know who it's going to. I'm - - -

You don't know. That's fine?---Sorry, I'm - - -

40 In any event, this is – when you referred before to the franchise agreement that you looked at, that is this document. Is that right?---Yes, it is.

All right. And so what we've got, then, is the front cover of the document?---Yes.

45 And then, if you turn over the page, which you will see is page 15 of 33 on the fax header. So we haven't lost any pages in between. See, it goes from 14 to 15. Do you see that?---Yes, I do.

But the actual franchise agreement skips to page 89. Do you see that in the bottom right corner?---Yes, I do.

5 And when you went back or pulled out the file, this is the document that you had on file for the franchise agreement?---Yes, it is.

So Westpac doesn't have a copy of the first 88 pages of the franchise agreement?---I can't confirm or deny that. I don't know that.

10 You don't know. Well, in any event, no one has provided it to you, the first 88 pages?---I haven't – thank you. Yes, correct.

And you made the point that this franchise agreement was dated 6 August 2010?---Yes, I did.

15 You made that specific point this morning as to the order in which things happened?---Yes, I did.

20 All right. And if we go to the page ending .9122. You will see – have you got that page open, Mr Welsh, 9122? We haven't come to that yet on the screen, but that's all right if you've got it in front of you?---Yes, I do.

And you will see it sets out what the initial franchise fee is. Do you see that, about a third of the way down the page, item 13?---Yes.

25 And item 13A has six elements to it, comprising the aggregate – that together comprise the initial franchising fee?---Yes.

30 And can I suggest to you – you may be very good at maths and can do this in your head – but can I suggest to you that those first five elements add up to \$85,409.09?---I will run with your numbers.

35 All right. And then, if we go to page 9127, which is the last page in the document. You will see item 31 is a special condition. Do you see that there, Mr Welsh?---Yes, I do.

And you will see the special condition is:

40 *A deposit for the sum of \$10,000, to be paid immediately, and the balance of \$75,409.09 plus GST, to be paid by no later than 31 August 2010.*

?---Yes, I do.

45 Do you recall having noted the amount of the initial franchising fee when you reviewed this document?---Sorry. Can you just be – which fee are you referring to?

What is defined as the initial franchising fee, which has the five elements that adds up to \$85,409.09?---Yes.

5 Do you recall having noted that when you reviewed this document?---Yes, I did note it.

All right. And so you noted that the – what was to be paid for the franchise was, effectively, 85 and a half thousand dollars?---Yes.

10 And you noted that that was to be paid no later than 31 August 2010?---No, I didn't. I didn't note that.

15 Would the date that the franchising fee has to be paid be a relevant matter to assessing whether credit should be provided?---You would want to know the cashflows.

20 Well, if you're – if a borrower is borrowing money in order to buy a franchise, wouldn't it be relevant to know whether or not they've already bought the franchise? This loan – I'm sorry. Let me break it down?---Sorry. This – thank you. Thank you.

25 This loan application is being made on 23 September 2010. The franchise agreement that the borrower has provided to your bank shows that the entire price for the franchise – or the initial franchising fee was to be paid by 31 August 2010. Is that something that you would expect to raise a red flag within Westpac?---No.

30 What was the money being used for?---Well, the – that's what a document – this document you're – on the facts of it is right. And that – I'm not doubting that that's what the money was. But there would have had to be a payment. And, as I tried to explain a little earlier, that would have been going through a set process. So, you know, the moneys would have had to come from somewhere and he was seeking money to buy it. So the loan – he didn't sign the agreements until December. So, you know – sorry – I didn't – I didn't explore this at great depth.

35 I just want to understand your answer to that. Are you saying, if he had already paid the \$85,409.09 by 31 August 2010, he must still have obtained the money from somewhere to do that? Not from you but from somewhere?---Hypothetically, yes.

40 And, therefore, perhaps he was taking out the loan in order to reimburse whatever source he had used to pay for it. Is that your speculation?---On – on this read of the facts, you know, I suppose – I suppose that could be the case.

45 Well, you just have no idea, do you?---No, I don't. Sorry. That's why I'm struggling.

No. I understand. But there's nothing on the face of any of the contemporaneous documents from 2010 that enables you to answer these questions?---Correct.

And I want to understand two things. The first is when you told the Commissioner this morning that you had gone back and looked through these documents and satisfied yourself that it was appropriate to make this loan, and a senior credit manager had also satisfied him or herself that it was appropriate to make that loan,
5 how did you do it without knowing any of this information?---I went through the – the collection of documents, including, you know – and – and made that call of looking at it from end to end. But I – you don't typically – in my experience as a banker, you don't just focus on one document; you look at the whole of the documents, the – other conversations with the clients, the timing. You know, it's
10 quite a broad – broad approach that you have to be. And it's not just a linear tight – one document and that's – that's the only thing one looks at.

And the second thing I want to understand is how do you believe that the banker satisfied herself in 2010 that it was prudent to make this loan?---Can you just – how
15 - - -

How do you believe, based on your review, that the banker satisfied herself in 2010 that it was prudent to make this loan?---How do I satisfy myself?

20 No. How – well, you've reviewed this. You've decided that it was appropriate to make the loan?---Yes.

Do I take it your answer is, "Well, if you just look at everything from end to end, then you can think that the loan's okay"?---I wouldn't – wouldn't want that to come
25 across as flippant. You know, I can't comment what the banker did, because I – as you've rightly pointed out, I haven't spoken to them.

And you have no notes other than the deal build request?---So – correct.

30 Now, let me ask you this, now that we've looked at this franchise agreement, which you've made the point you had already looked at before and noted it was \$85,409.09, what's the loan to value ratio for this loan?---The – sorry – the loan to value ratio?

Yes?---There isn't a loan to value ratio.
35

I see. Because – what? Why is there no loan to value ratio? Is that because you're not actually purchasing anything of any value that's to be secured by the loan?---The – it doesn't – it doesn't apply here.

40 Okay. Why not?---Because we were lending under the general policy, so you weren't looking at a – a loan to value ratio.

Did you in any way need to consider the amount of money that you were lending, against the value of the business that was being bought?---I am just - - -
45

Yes. Did Westpac in any way need to consider the amount of money that it was lending against the value – or compared with the value of the business that it was

buying – was being bought?---Yes, we would have looked at the – the value. We would have looked at the amount that was being paid for that, as well as looked at the cashflow and – and a few things.

5 And so what is the value of the business that's being bought here?---Well, technically, the value is what it was paid for, so the 165.

But we've just looked at the franchise agreement and what was paid was \$89,409.09?---On – on this page. I don't know – as you've rightly pointed out, this is a 92 page document. I don't know what the other pages are. I don't know that. So apologies for that.

When you satisfied yourself, did you come to a view as to how much this business cost?---Did I satisfy myself - - -

15 When you satisfied yourself that it was appropriate to make this loan, did you come to a view on the documents as to how much this business cost?---I didn't do a forensic review of how much this business cost, but was I - - -

20 Did you do any review as to how much this business cost?---I looked at it and 160,000 is – for a mobile franchise with a bit of equipment and a truck seemed not unreasonable to me. I took a reasonableness approach, which is often a judgment, you know, a banker has to make.

25 Can we go to the deal build request, which is tab 20 to your exhibits.

THE COMMISSIONER: What's the doc ID?

MR HODGE: I'm sorry. It's WBC.104.001.9103.

30 THE COMMISSIONER: Thank you.

MR HODGE: So this is a form that has to be completed internally, Mr Welsh?---That's correct.

35 And it's a form that's completed by the banker. Is that right?---That's correct.

And it was completed on 19 October 2010?---That's the date.

40 That's the date it was submitted?---Sorry. I thought you said when was it completed. I don't know when it was completed. That was - - -

It could have been completed before 19 October?---Yes.

45 But it was submitted on that day?---Yes.

And it sets out the building up of the deal. Can we go to page 2, which is .9104. And you will see the description in relation to relevant - - -?---Sorry. Which – I have just lost – which page is it?

5 I'm sorry, page 2, .9104. It should be 2 of 15, down the bottom of the page?---Two of 15. Thank you. Thank you.

And you see down the bottom of the page:

10 *Relevant recent events: customers have approached the bank to fund the purchase of franchise in Glenmore Park with a purchase price of \$165,000.*

See that?---Yes, I do.

15 Continuing:

...using the mother's property as security.

?---Yes, I do.

20

Continuing:

Partner is the sole director with the daughter as secretary and the mother as a shareholder.

25

?---Yes.

Now, do you agree with me that, as at 19 October 2010, Ms Flanagan was not a shareholder of this company?---Yes.

30

And this purchase price, which is said to be \$165,000, that is, presumably, drawn from the loan application? That was the point you made earlier, that it's 165 – 5000 of owner's funds and 160,000 from the bank?---Yes.

35 And if we go over, then, to page .9105, which is page 3 of 15. And you will see there's a box which begins:

Current events in relation to owners/managers.

40 ?---Mmm.

And you see the statement:

45 *Carolyn will be a shareholder of this business and receive a wage and dividends.*

?---Yes, I do.

Now, at that time she wasn't a shareholder. We've agreed on that already. We also agree she wasn't an employee of the business?---Yes.

5 And it says she's going to be using her property, though, as security for the loan?---Yes.

And the commercial benefit is said to be that she will receive a benefit from dividends?---Yes, that's what it says.

10 And if we go over the page to page 5 of 15, which is .9107. We see at the top of the page the amount of the loan is \$160,000?---Yes, I do.

And, under the heading Risk:

15 *Risk is assessed at medium.*

?---Yes.

And it has then Transaction Risk, which is also described as medium?---Yes.

20

And, factual dot points, the first is:

Facility will be fully secured.

25 ?---Yes.

And you see there's then, at the bottom in that box:

66 per cent LVR.

30

?---Yes.

And LVR is loan to value ratio?---Yes.

35 And you will recall, perhaps 10 minutes ago, you were explaining that loan to value ratio is irrelevant here?---For the – I thought when we were talking about that – maybe I misinterpreted you, but I thought you were talking about the loan to value ratio of the business.

40 Yes. Yes. I'm right. But you are saying loan to value ratio is relevant, it's just relevant in this case against the value of Ms Flanagan's property?---Of the security.

Yes?---Yes, that is correct.

45 And then, if we go over the page, you see Serviceability?---Yes, I do.

Continuing:

Factual dot points: I have taken net profit from forecast at 70 per cent for prudence.

?---Yes, I do.

5

And the forecast, is that the profit and loss statements you were referring to before?---Yes. I think – I assume so.

10 All right. And, can I ask, did you understand that this was a new business or the purchase of an existing business?---So it was a new business for the partner, but it was a purchasing of – a business in – in the area of that – of that [REDACTED] area. So it was – it was both. It was a new business for them, but it was – purchasing a new company for them – sorry – but it was purchasing an existing area that had been up and running.

15

An existing franchise area. Is that right?---Yes.

20 All right. Now, if we just go, then, to page 14 of 15, ending in .9116. And you will see – this is identifying, about a third of the way down the page, Ms Flanagan as the guarantor. Do you see that?---Yes, I do.

And you see then it identifies her employment history?---If you could help - - -

25 About two-thirds – perhaps about halfway down the page, there's the underlined words employment history?---Yes. Yes, I do.

And it says employment type part-time?---Yes.

30 And the employer that's redacted is the borrowing company?---Yes.

And it says she's employed in the family business?---Yes.

And the start date of her current job was 30 July 2010?---Yes.

35 Now, we agree, don't we, that just wasn't true?---Yes, we do agree.

And then, if we go over to page 15 of 15, .9117?---Yes.

40 Do you see there's a Certificate of Quality:

I hereby confirm that I have checked that this form is complete and correct.

Signed electronically by the banker and dated 19 October 2010?---Yes.

45 Have you seen in your review of the file any document that could explain how somebody could say they have checked that the form is complete and correct and,

yet, say that Ms Flanagan had started employment for the borrower on 30 July 2010?---Sorry. What's the question?

5 Have you seen in your review of the file any document that could explain how somebody could, on the one hand, certify that the document is complete and correct, and on the other hand state in the document that Ms Flanagan was employed by the borrower from 30 July 2010?---No, I have not seen a document.

10 All right. Commissioner, is that a convenient time?

THE COMMISSIONER: Yes. How long this will take, I don't know. What I think I will do, Mr Hodge, is, at least notionally, aim to come back at quarter past. That's very much in the hands of the techs whether they can get it up and running in that time, but if I say quarter past, we will see how we're going and review what we then do.

MR HODGE: Thank you, Commissioner.

20 **ADJOURNED** [10.58 am]

RESUMED [11.15 am]

25 THE COMMISSIONER: I gather, Mr Hodge, it looks like an out-of-hours fix, I'm afraid, for the public screens. I am sorry that should be so. We do try our best to make things available, but for once the technology has defeated us, at least for today.

30 MR HODGE: Commissioner, that's my understanding, as well. And the other matter I should mention is we've checked and we understand there's not a non-publication direction made with respect to the name of the franchisor. So there was a bit of real-time redacting being done by Law In Order. They don't need to be concerned about that.

35 THE COMMISSIONER: All right.

MR HODGE: Mr Welsh, the next document I would like to take you to is tab 21 of the – I'm sorry – just before I do that, I want to show you a different document, which is – can we bring up WBC.407.001.0146. So this is an internal email of some Westpac employees. You will recall, Mr Welsh, that we were looking at that deal build request that was submitted by Ms Fletcher, the banker, on 19 October 2010?---Yes. Yes. Yes.

45 And then this – this, then, is a chain of emails. And I was hoping you could explain to us what's going on. So there's a person named Andrew De Ocampo, who is a

customer loan representative?---Can you just go down to the next page, just to read up - - -

5 Yes. I'm sorry. If we go to the next page?---I don't think I have this document, do I?

Yes. Can we bring up both pages of the email?---Yes. That would be good. Thank you. Thanks for that help. There we go. Thank you.

10 So there's a customer loan representative. And he is emailing back to Ms Fletcher, the local business banker, and says he's currently building a deal for the above subject. I am not sure why that has just gone off. Perhaps if you – if you have a look in your hardcopy, Mr Welsh. I'm sorry. You don't have a hardcopy of that document?---I don't have that, do I? I don't think I submitted it. Sorry.

15

THE COMMISSIONER: The Gremlins are getting at us, I fear, Mr Hodge.

MR HODGE: Commissioner, given that the screens are only visible to the Commission staff and the witness and the Westpac employees, it doesn't seem as if there's a particular need to bring down these documents, if there's a non-publication direction, but I am in your hands - - -

20

THE COMMISSIONER: No.

25 MR HODGE: - - - about that.

THE COMMISSIONER: At least for the moment while we have no public screens, I am afraid, we can at least use them on the screens on the bar table.

30 MR HODGE: Thank you, Commissioner.

So, Mr Welsh - - -

35 THE COMMISSIONER: I just – in saying that, I hope I'm not thereby creating difficulties for the media where they are left uncertain about positions. The last thing we need is them to be wondering what they can and can't do. These documents are redacted.

40 MR HODGE: Yes.

THE COMMISSIONER: So there's no difficulty about these, is there?

45 MR HODGE: I can actually see in – Ms Dias is pointing out there are some respects in which the redaction hasn't been done properly. The media room screen will be cut at the moment, so they can't see the documents. I don't think there is anybody sitting in the courtroom at the moment who can attempt to peer over and see the documents at the bar table.

THE COMMISSIONER: The media have got a hard enough job without my making it harder for them. I think the best we can do, Mr Hodge, is stagger on as we are.

5 MR HODGE: Yes.

THE COMMISSIONER: If you would indicate at the point of each document going up on the screen whether there is an NPD relating to it, that, I hope, will be enough to give everybody notice of whether there's an issue or there is not.

10

MR HODGE: Yes. And there's – at the moment, there's – I think we've sort of come out of control at the moment, because there's random redaction being done as we watch the screen, which is redacting things which are not subject to a non-publication direction. So just stop. It's all right. Let's work through this in some sensible way. There's – if you look in the subject, you will see the name of the two borrowers that ought to be redacted. If you look in point number 1 on the first page, you will see the name of the person who is offering a guarantee that ought to be redacted. That's at the bottom of the page. But, in any event, I will, perhaps, just indicate what the relevant parts are as I'm talking. There's a non-publication direction that hasn't been fully complied with with respect to these redactions. And Commissioner, I apologise, we will have to work through it as we go. Can I ask you, Mr Welsh – is that – are you – perhaps, content is not quite the right word, Commissioner, but unfortunately that's the best we can offer you.

15

20

25

THE COMMISSIONER: Take it or leave it.

MR HODGE: Mr Welsh, Mr De Ocampo - - -?---Can I just – sorry to add - - -

Yes?--- - - - to the complexity, but I have this screen of yellow here.

30

Mr Welsh's screen has gone down. Can we bring back up the document for Mr Welsh?---Sorry. Sorry.

It's not your fault, Mr Welsh?---Thank you.

35

Thank you?---Thank you.

Mr Welsh, you will see - - -?---Yes.

40

- - - there's an email sent by Mr De Ocampo, the customer loan representative, to Ms Fletcher. Can you just explain what their respective roles are?---So Ms Fletcher is our banker. And the other person is – works in our customer loan area. And they would have received the deal build request form. That's the abbreviation of DBRF. And they would be building the deal into TLA and TLW.

45

All right?---TLA, sorry.

Into what, sorry?---Into the system. They would be – the tab under 21. They would be the one putting the information into tab 21 - - -

All right?--- - - - the credit memo.

5

And you see on the second page that it's said:

Guarantee being offered by Ms Flanagan.

10 And then the second dash underneath that:

Shouldn't it be cat B, as she is not a shareholder?

?---Yes.

15

And, going back to the first page of the document, you see the response to that third point from Ms Fletcher is:

Guarantee being offered by Ms Flanagan should be doc 2 supported and cat B. Carolyn's name has been updated in CIS to reflect her middle name.

20

Do you see that on the first page?---Sorry. Bear with me, please.

25 You see there's a numeral 3 and then a slash, a forward slash?--- has been updated in CIS to reflect her middle name. Yes. Yes, I do. Yes, I do.

And there doesn't seem to be any response to the statement that Ms Flanagan is not a shareholder?---That's correct.

30 But now – I tender that document, Commissioner.

THE COMMISSIONER: Exhibit 3.11, emails between Fletcher and De Ocampo, 20 October 2010, WBC.407.001.0146.

35

EXHIBIT #3.11 EMAILS BETWEEN FLETCHER AND DE OCAMPO DATED 20/10/2010 (WBC.407.001.0146)

40 MR HODGE: And then can we bring up WBC.407.001.0035. This is not a document that's in your - - -?---Okay.

45 - - - bundle, Mr Welsh. So you see this is a document that has been produced by Westpac, and it's a company search. And you see the date of the report is 20 October 2010?---Yes.

Now, you don't have the unredacted version, so you will have to take my word that this is a search in respect of the borrower. But you can, perhaps, see that the registration date is 30 July 2010 for the company. You will see that about halfway down the first page?---Under Company Information?

5

Yes?---Am I reading that correct?

Yes. You see company information - - -?---Yes.

10 - - - about halfway down the page, registration date 30 July 2010?---I see that date, yes.

And then if we go over to – well, you see at the bottom of the page it says “share structure” and there's only one share issued?---The second page?

15

No. No, at the bottom of the first page. You see, “class, ordinary shares”?---Number of shares issued 1.

20 Number of shares issued. And then, over the page, there's the shareholders, which is redacted on this version. And, again, you will – we can perhaps provide an unredacted version to you if this will assist, but you can take my word that what that – the name identified there is the name of the partner. And that doesn't surprise you?---No. No.

25 And so what appears to have happened is that Westpac performed a search – or somebody within Westpac performed a company search on 20 October 2010. That search showed only one shareholder, who was the partner, and hence, the chain of emails in which an email is sent saying that there's – that Ms Flanagan is not a shareholder. Do you agree with that, that that must be what happened?---It seems
30 very reasonable.

I tender that document, Commissioner.

35 THE COMMISSIONER: Exhibit 3.12, company search 20 October 2010, WBC.407.001.0035.

**EXHIBIT #3.12 COMPANY SEARCH DATED 20/10/2010
(WBC.407.001.0035)**

40

MR HODGE: Now, have you seen any document that shows the banker having contacted the borrower or borrowers about the fact that Ms Flanagan is not a shareholder?---No, I haven't.

45

Would you expect, if one of your bankers was informed by another section of the bank that what she had been told by the borrowers was incorrect and that, in fact, the

guarantor was not a shareholder, that that would be a matter that would put the banker on alert?---Yes, I would.

5 And what would you expect that she would do about it?---Remedy the – talk to the client to remedy the – the situation. Talk to the customer to remedy the situation.

And would a sufficient remedy simply be to have the guarantor included as a shareholder?---Sorry. Just – could you just - - -

10 Yes. Would a sufficient remedy of the situation be to simply have the guarantor included as a shareholder of the borrowing company?---It would be one of them, but it would trigger a conversation. Sorry. I'm struggling a bit. It's not – there would trigger a conversation to say hey, you told me something. Hey, it's not quite right. Let's have a look at it and work out what it is, what's the facts here.

15 And, bearing in mind, Westpac wouldn't take a guarantee from a parent, as you've explained already, if there was not a direct benefit from the business borrowing to the parent?---That's correct.

20 And we've talked about the two direct benefits that were included in this deal build. One was the wages. And we know that just wasn't the case; that didn't exist. Do you agree with that?---Yes.

25 And the other benefit was the benefit of a dividend stream from being a shareholder?---Yes.

And there had, obviously, been either some inaccuracy or misunderstanding on the part of the banker in relation to - - -?---Sorry – I just missed – someone sneezed.

30 There had, obviously, been some inaccuracy in what was said to the banker, or misunderstanding by the banker as to Ms Flanagan's status as a shareholder?---Yes.

35 And that went to the heart of the only other remaining direct benefit that Ms Flanagan could have in relation to the loan to the company?---Yes.

And the bank had taken no step to satisfy itself as to the likelihood that Ms Flanagan would receive a dividend from the company?---The – sorry – can you just repeat - - -

40 The bank had taken - - -?---Yes.

- - - no step to satisfy itself – I'm sorry. I should withdraw that and break it down slightly?---Thank you.

45 The bank had taken no step to satisfy itself that, even if Ms Flanagan was a shareholder of the company, she had any realistic prospect of receiving a dividend from the company?---I can't see any evidence of the conversation, so I - - -

Ms Flanagan wasn't a director of the company?---At this – yes.

Well, at any time, she was never a director of the company, was she?---No, she was never a director. No. Correct.

5

She had no control over whether or not the company declared dividend?---That's correct.

10 The bank intentionally, in accordance with its policy, didn't seek a copy of the constitution of the company?---That's correct.

So it had no idea whether the constitution – whether there even was a constitution for the company or whether the company was operating under the replaceable rules?---That's correct.

15

It had no idea whether there was – if there was a constitution, it said anything about the circumstances in which the company might pay a dividend?---One can see no – yes, that's correct.

20 And, really, then, the direct benefit is satisfied, then, on Westpac's view in this case, simply by the nomination of Ms Flanagan as a \$1 shareholder of a company controlled by her daughter's partner. Is that right?---The – sorry – I just missed the first part of that question.

25 Ms Flanagan – well, let me break it down. Ms Flanagan was ultimately, as you know, when you did a search this year - - -?---Yes.

- - - registered as a \$1 shareholder of the company?---Yes, she was a shareholder. Yes.

30

She was never appointed as a director, or anything like that?---That's correct, yes.

35 It doesn't appear as if, in fact, anyone actually submitted something to Westpac back in 2010 showing that she had been appointed as a shareholder. Do you agree with that?---I haven't seen any evidence.

You haven't seen anything?---I haven't seen any evidence.

40 You haven't seen any document where she consented to being a shareholder?---No, I haven't.

45 And, therefore, when we've been talking all the time about what is the direct benefit that Ms Flanagan was to get out of this company, is it Westpac's position that it is sufficient merely for a parent, late in the stage of the compilation or the building of the loan, to be noted as a \$1 shareholder in the company and there be nothing else?---Correct, yes. Our policy is that, if you are a shareholder, then you have rights

to – you know, the normal course is you have rights for dividends. And that – that complies to be counted as commercial benefit for the future.

5 THE COMMISSIONER: How often, in your experience, would a proprietary company of this kind pay a dividend?---I'm not – I'm not sure of that.

10 Not sure? Have you – can you point to any examples that you have seen in your time as a banker where a closely held proprietary company of this kind has paid dividends to shareholders, as distinct from take wages, which are deductible against the income of the company?---In the normal course, there probably would not be dividends, at this level.

15 In the normal course – or am I mistaken – is an available point of view that it would be rare for a private company of this kind, a proprietary company of this kind, to pay dividends?---Yes, I think that's correct.

Yes.

20 MR HODGE: Mr Welsh, I want to take you to another document now, which is an exhibit to your statement. It's exhibit number 21. Now, this is a later document as part of this process of building a deal. Is that right?---Yes. Correct.

25 And if we go to – if we bring up page 2 of that document, we will see a section which is Relevant Recent Events. And can we put that on one side of the screen and then bring up on the other side of the screen the document which is tab 20, WBC.104.001.9103. And I just want to show you something, which is, if we bring up page 2 of that document on the right, .9104. And what you will see is, if you – this section at the bottom, which is Relevant Recent Events, on the right-hand side begins:

30 *Customers have approached the bank to fund the purchase.*

Do you see that on the right-hand side?---I do.

35 And then that's the same text that over on the – the document on the left-hand side, you can see under the section Relevant Recent Events. It also begins:

Customers have approached the bank to fund the purchase.

40 ?---Yes.

And if we then go to the next page, .9104, on the right-hand side. And I think what you will be able to see - - -?---I have got 03 here, if you want me to have 04.

45 On the right – I'm sorry – it should be 05. Thank you. On the – I know the document - - -?---Thank you.

- - - is – begins 9103, but we’re on 9105. So the only thing - - -?---I have that now, thank you.

5 I just want to make this point to you so you understand what we’re doing?---Thank you.

10 The text that is in the document on the right-hand side has been copied into the text on the – in the document on the left-hand side. And the difference is that, for some reason, the text on the right-hand side gets cut off. So you can’t see all of the full context of the sentences. But we know that that text in the document on the right-hand side was – is part of the document that was completed by the banker on 19 October 2010. So I just want you to understand what the source is of the text that I’m now going to take you through. Do you see that?---I do.

15 Thank you. So we can bring down the document on the right-hand side and just focus on what’s on the left-hand side. And what I want to go back to is this question of what exactly is the business that is being bought by this borrower. And you see what’s recorded is:

20 *Customers have approached the bank to fund the purchase of Poolwerx franchise in Glenmore Park with a purchase price of \$165,000 using mother’s property as security.*

25 Do you see that?---Yes, I do.

And if we just pause on that and go back to the first page of this document, you will see – in the middle of the page you can see – I’m sorry – about a third of the way down the page you can see “total lending value, \$160,000”, and “loan to lending value, 100 per cent”?---Yes.

30 I just want to understand, does that mean all that is being looked at here is what per cent of the total loan is being loaned out by Westpac? There’s no other consideration of the loan to value ratio?---In – does that 100 per cent – in that box there, is that what that means?

35 Yes. Is that right?---Yes.

Okay?---It’s the 160 by the 160.

40 Yes. All right. And then if we go back to the second page where we were looking at relevant recent events, we see that what’s explained is – about a third of the way down the page, “customer” – and it’s blanked out, but that’s the partner:

45 *...has worked with a Poolwerx franchise recently previously for two and a half years in Penrith until the previous franchisee was terminated.*

And then you see, a paragraph down:

Poolwerx are very excited about moving forward with the partner and he will be looking after areas from Glenmore Park, Cranebrook and Kingswood with existing clientele.

5 Do you see that?---Yes, I do.

And then:

10 *Partner has a big shed that he will be working out of to start with, keeping his costs minimal. This will be a mobile service in which Poolwerx are happy with this arrangement.*

Do you see that?---Yes, I do.

15 And then:

20 *Partner has been working for Poolwerx for the past three months servicing their customers in the above area since the store in Penrith closed, and is estimating that in two months trading the income has been \$32,000.*

?---Yes, I do.

25 And so I just want to make sure that this reflects your understanding of what the particular state of the business was. First, there had been a franchise in Penrith for Poolwerx. That was your understanding?---Yes.

And that franchise had operated from a store?---Yes.

30 And the partner had worked at the store?---And worked in the – well, I don't know whether they worked in the store or the franchise.

Worked for the franchise that - - -?---Yes.

35 - - - operated from a store?---Yes.

And that franchise had been terminated?---Yes.

And the store had been closed?---Yes.

40 And the partner had now, for three months, been working directly for Poolwerx?---Yes.

And he was now planning to operate a mobile service?---Yes.

45 And there would be no store?---Yes.

And so it was going to be a new franchise where the franchisee would be this borrowing company. Is that right?---Yes, that's right.

5 But it would be operating in a similar area to the previous franchise that had closed down?---Yes, that's correct.

But, whereas the previous franchise had been a store, this would be a mobile franchise?---Yes, that's correct.

10 All right. And that is the understanding that you had when you – after you looked through these documents and concluded that it was prudent and diligent to make this loan?---That is correct.

15 All right. And you referred to the profit and loss statements earlier. Can we bring up tab 13 of Mr Welsh's statement. And that's WBC.407.001.0067. It should be - - -?---No. No. I have it.

- - - tab 13, if – you've got it?---Yes. Got it.

20 All right. So this is a document headed Glenmore Park Profit and Loss. And you see at the top of the page it says "projected sales totals"?---Yes, I can.

And it has projected sales totals for the following 11 months?---Yes, I do see that.

25 It doesn't say what year, but presumably 2010 to 2011?---I made that assumption, as well.

And it has a budgeted gross profit margin of 70 per cent. Can you see that?---Yes.

30 And can I suggest to you – again, you might be able to do the maths in your head – that \$5253, which is shown as the purchases for August, is just 30 per cent of \$17,510, which is the projected sales for August?---You've lost me, but you're pretty good at this.

35 Well, if you have a look at it. So it's projected sales?---Which one? I just can't find the number, sorry.

That's fine. In the top left corner, you see August - - -?---Yes.

40 - - - projected sales \$17,510?---Yes. Yes.

Budgeted gross profit 70 per cent?---Yes.

45 And the purchases, which is \$5253, what I'm suggesting is that's 30 per cent of \$17,510?---Yes. Yes.

That would make sense. That's how you read a profit and loss statement?---Yes.
Yes.

Gross profit is \$12,257. That's 70 per cent of \$17,510?---Yes. Yes.

5

So – and then you will see there's a series of operating expenses?---Correct.

And, can I suggest to you, where there are operating expenses that are calculated by
reference to some percentage figure of another number, they –or some franchise – or
10 part of the franchise agreement, so the marketing fees and the marketing obligation,
they sort of vary across the year. Do you see that? So marketing fee is two per cent
is \$350, then \$329, that sort of thing?---They're variable costs - - -

Yes. Well?--- - - - of the turnover.

15

Yes. Except then, if you have a look at all the other items, things like
communications and motor vehicle and, going over the page, various other expenses
like accounting fees, bad debts, bank charges, borrowing costs, collection fees,
computer costs, repairs, etcetera, all of those other costs, not linked directly to what's
20 being paid to the franchisor, are just standard round numbers?---Are fixed costs, yes.

Well, you wouldn't actually – they're just estimates of what the future costs are
going to be, aren't they? You wouldn't think that - - -?---Yes. Correct. Correct.

25 A bad debt is not – you wouldn't think that there's a fixed cost of \$100 a month for
bad debts. Do you agree?---It's a – the budget assumption

It's just the budget assumption?---Yes.

30 And that's what you would expect for projected profit and loss?---Very much so.
Very much so.

And have you seen any document that explains what the substantive basis is of these
projected sales totals?---The document that I looked at from that is if you go to page
35 4 on this - - -

Yes?---So these are the '09 and '10 numbers. I assume they are. And you can see
that the total of them is – in '09 was 365. And the '10 was 373. And – so that's – I
use that as – that's when I was looking at this, they've made those – that was
40 historicals that I saw.

And you assumed that this came – this document came from whom?---I don't know
who it came from, actually.

45 All right?---I don't know directly, but it was part of – as you mentioned, it was – if I
go with your way of working this, it's six of 66 – 16 of 66.

Yes?---So it was in a package of documents.

And would you ordinarily expect your banker to verify this in any more substantive way?---Ideally, I would like the banker to have the historical financials from the
5 previous business to be able to anchor them back to – you know, ideally you would like that.

Because – you tell me if I’m right about this – these are gross sales, that document
10 you were pointing to a moment ago on page 4 – these are gross sales for a mobile business in Glenmore Park?---That’s what it says.

And that wasn’t the franchise that had shut down. The franchise that had shut down
15 was a store in Penrith? Do you agree with that?---That’s an assumption. I don’t know whether that’s right or wrong.

Well, no one knows, really, then, what these figures are for, do they?---Well, I – it’s
– you don’t know 100 per cent exactly what these figures are, no. I can’t say that,
sorry.

All right. And so, though, what has been done in terms of serviceability is if we
20 come to – I’m sorry. Just before we do that, just go back to the start of tab 17. And when this is setting out projected sales totals. And then move over to the third page where you see net profit. And do you see in the bottom right corner the net profit projected for the year is \$90,106?---Yes, I do.

And if we then go to the serviceability worksheet, which is tab 19. And that has
25 come up on the screen. And you see the adjusted EBITDA is said to be 63, which means 63,000?---Yes.

And at the bottom it said “net profit forecast taken at 70 per cent for
30 prudence”?---Yes.

So that the EBITDA figure has been arrived at by taking that \$90,106 forecast profit
35 figure, applying 70 per cent to it, and then taking that as the adjusted EBITDA. Do you agree with that?---Yes, I do.

And that then seems to be the limit of the assessment that’s done on the ability of the
40 business to service the loan. Do you agree with that?---These are the key numbers used, yes.

And, again, from your perspective, what you would expect one of your bankers,
being diligent and prudent, to do, does that appear to be sufficient?---Yes, it does.

All right. And the consequence, then, is there’s some figures that are given for
45 projected profit and loss where there’s no source identified for those figures. On the documents that you’ve seen that that you can file - - -?---On the documents I’ve seen – I can’t see what the source was on the documents I’ve got.

And there's a document that appears to be the projected or – I'm sorry – appears to be the last two years of gross sales - - -?---Yes.

5 - - - for a mobile business where – in Glenmore Park, where it's unclear exactly whether this is the same business that's being taken over or it's a different business. Do you agree with that?---I hesitated because I can see how you might have read that.

10 Yes?---When I reviewed the file, I didn't read it that way.

You read it as this is the business that's being taken over?---I read it this is the business taking over, this is the historicals. They had a 373 turnover. And we took 65 per cent of that to get the – or the numbers here took 65 per cent of that to get the projected sales. So they discounted them back from the previous business. Yes. So
15 I – you know, when I looked at that I thought no, pretty reasonable sort of assumptions.

20 Would you expect, just as an example, to at least see – if this is an existing business that's being taken over – and that's the assumption that you made?---Yes.

Would you expect to at least see, then, the last two years of full financials for that business?---You would like to see them, if they're available.

25 Isn't that what's required under your policy for an existing business, that you would get the financials that exist?---Yes, it's the preference to get them.

All right. Sorry. When it's the preference, does that mean it's optional?---Well, if – if you can't get them - - -

30 Yes?--- - - - you don't – in my experience, you can't say sorry, we can't lend you money because the previous business isn't going to give their accounts to you. You know, we would probably not lend too much if that was – you know - - -

35 Well, you would say it if you didn't have Ms Flanagan's house as security, wouldn't you?---I – I – you know, I think you would want – I'm hopeful that there was – you know, I would like to think there was the right inquiry here, but if you can't get them, you can't get them. If you can't get the financials, you can't get them. You have to then work with it and try and piece together the jigsaw puzzle of what became this deal.

40 Because Poolwerx was an accredited franchise with Westpac, you had information about the performance of Poolwerx franchises?---There was some information.

45 And - - -?---I - - -

- - - in reviewing the documents, have you seen any reference to the utilisation of that information to assess this application for a loan?---No, I haven't.

All right?---I think, from memory – and I might have – I might have not communicated properly – I think Poolwerx was accredited at a later date after 2010.

5 I understand. They may not have been accredited at that time?---So they may not have been accredited there at that – yes – so at that time.

So you may not have had the information. I apologise. I understand?---No. I think I took you down the wrong path.

10 And can I return, then, to a topic we've hit on a number of times this morning, which is what this money is actually going to be used for. Would you expect your banker to know with precision who was going to be paid with this \$160,000?---Not – not with the precision that – that you went through to, no, I wouldn't.

15 Well, let's break that down a little bit more. Would you expect them to know how much it was actually going to cost to purchase the business itself?---Yes. Yes. Well, sorry, I would expect them to know the total amount, so the 165. That's what – I wouldn't – that's what I would expect them at this level.

20 But what is the – again, I feel like we've run around this a few times. What is the 165,000 actually for? Is it for the cost of the business plus working capital, plus stock, plus vehicles, or is it just for the business? What is it for?---Plus the rights to operate with the brand, and the – and the support of the marketing to operate the Poolwerx franchise, for a business that historically had a 300,000 turnover and on the
25 forecast was going to have a 240,000 turnover and make \$90,000. Now, that seems not unreasonable to me, on my review of the file.

But what you wouldn't expect your banker to have figured out, then, is does it cost \$85,000 for the franchise rights?---Correct. I – correct.

30 And if your banker had figured out what is apparent on the face of the documents, that it costs \$85,000 for the franchise rights, would you have expected your banker to have figured out what the rest of the money was being used for?---Not – not necessarily, no. I would have thought the banker would have taken on good faith
35 with a bit of reasonable judgment that that's – that level at 165 was not unreasonable. As you say, I don't see the other documents here. There might have been more of that 90-odd page document, so I'm not – I can't tell what they did, sorry.

40 And when you say you wouldn't expect the banker to do that, is that because always what you know about this and what the banker knew was that Ms Flanagan's house was going to be on the line in securing the value of the loan?---No.

45 If they were having to lend against cashflow from a business, would you expect your bankers to be more diligent in actually understanding what it was costing to buy the business and what the cashflow was going to be?---Hypothetically, yes, if that was the case.

And so it's because the only security – or it's because the security available is Ms Flanagan's residential home that that affects the approach that you expect your bankers to take to being diligent and prudent?---No.

5 I'm not sure if we're at cross-purposes then. You agree with me that you would expect more, in terms of the assessment of what the cost of the business was to purchase, and what the cashflow of the business would be, if the bank was lending against cashflow?---Yes.

10 And that, in terms of what you would expect a diligent and prudent banker to do, they would need to satisfy themselves as to exactly what the purchase price was in that circumstance, if lending against cashflow?---Yes, that's correct.

15 And they would need to satisfy themselves as to exactly what the basis was of the cashflow, if lending against cashflow?---Yes, that's correct.

But, in this case, that's not what you expect of a diligent and prudent banker. Is that right?---In this case?

20 Yes?---That's correct.

And that's because Ms Flanagan's home is on the line?---No, that's not correct.

25 So why is it?---So the way you put the previous – let's take that hypothetical example of looking at cashflow lending. It's a pretty complex operation. You would expect historicals of the financial, they might have a CFO. You would have a lot of – a lot more information. And so you would expect that for a cashflow deal. That's why, you know, banks are reluctant to lend to cashflow lending, unless you – you know, because it's pretty sophisticated, as you've unpicked through this. So when
30 you get a small business, you're not putting the partner through the show us your cashflow, show us your historical, show us your sensitivities and those sorts of things. You're trying to take a reasonableness approach to land to – to lend to small business, so you can help them and back them to get them into the deal they want to do. So – you know, and when I said to you earlier I looked through this and thought,
35 you know, a business that's drop – you know, that's this type of turnover, this type of profitability, for a \$165,000 deal, that's – that's – that's a – you know, the – that's about the right of – amount of focus you want with the inquiry, because if you can't get the financials, you can't get the financials.

40 When you turned your mind to the question of whether it was reasonable to make this loan, did you proceed on the assumption that the borrower had already paid 85 something thousand dollars for the franchise agreement rights?---No, I didn't.

45 So you thought that the borrower had already breached the agreement that required that payment to be made by 31 October 2010?---I didn't – I didn't actually think about it, actually. I didn't – I didn't look through it in that lens.

Okay?---That's not a lens I even considered.

5 No. And your point is, really, you just didn't consider what was being paid for the franchising rights specifically?---No. I'm not – not trying to give that – you're placing a lot of importance on it. I didn't. You know, as an experienced banker, I looked at the cashflows, I looked at the reasonableness, I looked at 165k for a business. That's a sort of assumption. I didn't get into the detail of I didn't – so that's – sorry – we probably are at a bit of cross-purposes. You bring a different lens to it than what I would expect from a banker.

10 And if we go to exhibit 39 to your statement. These are the bank statements. And can we go to WBC.407.001.0286. So you will see this is the first statement for the loan. This is when the loan is first opened on 22 December 2010. See copy of statement number 1?---Mmm.

15 And on 22 December there's a staff-assisted withdrawal of \$135,000?---Mmm.

Can you see that?---Yes, I do.

20 And I understand you to say you don't know what that money was used for specifically?---I – you're correct.

And it's just not really relevant to whether or not a banker exercised diligence and prudence in making this loan?---I – sorry, I don't understand the question there.

25 Why – it's \$135,000, if the purchase price of the business is \$160,000 less \$8000 working capital – and yet the amount withdrawn is \$135,000 – or why it's \$135,000 when the amount that had to be paid for the – to the franchisor was \$85,000. That level of detail just doesn't matter?---I'm not following your line of question, because
30 - - -

Did you expect that the initial withdrawal that was going to be made was to purchase the business?---Mmm.

35 You did?---Well, the – the – the final payment of – of whatever it would have been.

And what was that final payment?---I don't know that.

40 All right. Because – and it's not your fault. You didn't make this loan?---No.

But, when you go back through the Westpac documents, nothing tells you this information?---Of exactly what was paid for the loan?

45 For the business. Nothing tells you that?---Well, the – other than the fact that the customer said it was going to cost 165,000 and we approved 160,000 loan and they were working in the business and they would have been – I suppose I'm just struggling a bit, because there would have been cashflows moving around a bit, they

were working in this business. By this stage – this is late December – they had already been working in it for a couple of months. You know, I don't know what happened in between that. And, you know, deals change and move around. And they might have – who knows. I don't know. So – but it doesn't seem unnatural to me.

All right. And if we go to page 2 of that document. So these are some other payments that are made from this loan account?---Mmm.

10 By January, not all of the money has been taken out. You see, on 5 January there's an online payment made to Sydney Water?---Yes.

And then on 1 February there's another online payment made to Sydney Water?---Yes, I do. I've got the water payments.

15 And then if you go to page 3 of 4 – I'm sorry – I missed something. Go back to 1 February 2010 on the previous page. page .0287. You see there's a withdrawal: internet online banking, payment rent, \$1800?---Yes.

20 And you remember the business plan and the deal says that the partner owns a shed and is going to operate a mobile business?---Yes, I do.

And then if you go over to page 3 of 4, .0288, see, 28 February 2010, another payment for rent, \$2800 this time?---Mmm.

25 And, let me ask you first, did these particular payments I've pointed out to you, do any of them cause you concern about what this loan was used for?---I'm not sure why – why rent would be paying.

30 You don't know why rent – what about why this business would be paying Sydney Water?---Not sure.

And, as I understand it, to go back to a point I have made to you a number of times, it just – it just doesn't matter to Westpac what the money was being used for, did it?---No, I don't think that's correct. I don't – no, I don't think that would matter. You want to get very clear of the purpose of the loan, you want to establish it up. What – what would be a correct statement is I don't want my bank – I don't think I want my bankers reviewing every statement to see what every payment is. And I don't think our customers want them to see that. You know, there's an element of the relationship that built up of what they're going to run – how they're going to run their business, and you control it by the limits and those sorts of thing. I'm not expecting them to go through to find out whether they've been paying water.

45 One of the things - - -?---I don't think that's the role of the bank.

I'm sorry?---I don't think that's the role of the bank.

I understand. One of the things that – you’re saying, “If we provide what is, effectively, an overdraft facility to a customer, we shouldn’t be checking exactly what that customer is using that overdraft facility for.” That’s not your role?---Well, we’re – we’re – yes. Tick. Tick. Yes. Yes.

5

And, if a customer comes to you and says, “We’re going to purchase a business and the cost of purchasing that business is \$160,000 and we want a loan to purchase the business”, it’s also your view that it’s not the role of the bank to figure out whether in fact the purchase price of the business is \$160,000?---Not – not – I think that’s a bit more literal. So apologies if I’ve given you that – that impression. I’m – they should do a reasonableness test to sort of say is 165,000 about right for a pool franchise?

10

I think I don’t really understand this. If you’re purchasing a business, you sign a contract and the contract has a purchase price in it. Do you agree with that?---I – I don’t know in the circumstances what they signed, because I – I couldn’t see it, so ---

15

Well, you saw one document and it showed that the price for the initial franchise fee was \$85,000?---I saw one page of the document and one part of it, yes, correct.

20

And the reason this really matters, Mr Welsh, is because we need to grapple with this question: is the problem here the problem with Westpac applying its standards and policies in this case, or is the problem a problem with Westpac’s standards and policies, or is there no problem at all? And you, obviously, think there’s no problem at all. Is that fair?---I – I think that’s fair.

25

All right. Now, I want to ask you then about the guarantee and indemnity. You’ve, obviously, reviewed these various guarantee and indemnity documents, Mr Welsh?---Yes, I have.

30

And have you reviewed the original copies that your solicitors showed to the Commission yesterday?---Yes, I have.

35

Okay. And when did you review those?---When I saw them, which was Sunday.

Okay?---I think.

And did you form a view, based on reviewing those documents, as to what sequence of events you thought had occurred in relation to the guarantee and indemnity?---I had – I had formed the view already on what the sequence was.

40

Okay?---So I wasn’t – I didn’t form a view because of that – those documents.

45

Well, let’s have a look at the documents. So if we go to tab 27. This is the guarantee and indemnity signed ultimately by Ms Flanagan?---Yes, it is.

And Ms Flanagan believes she came into a Westpac branch. As to that first point, did she come into a Westpac branch? Westpac also believes she came into a Westpac branch?---Yes.

5 And Westpac – or you on behalf of Westpac believe that Ms Fletcher, the banker, met with Ms Flanagan?---Yes.

And if we just go to the document – if we go to page 5 of the document, which is .9137. Sorry – actually, before we do that, can we go to page 1 of the document,
10 which is .9138?---Nine-one - - -

9138. I'm sorry. Actually, that's the form of acknowledgement over the page from the document?---Yes, that is.

15 So, just to make sure we understand each other on this, this is a standard form document, this form of acknowledgement that appears in Westpac guarantees at the time?---Yes, it is.

And there's a series of questions that the guarantor is supposed to answer before signing the form?---Yes, it is.

And - - -?---Yes.

- - - is it your belief that Ms Fletcher, the banker, filled in the yeses on this
25 questionnaire?---Yes.

And so the first question that Ms Fletcher filled in yes to was:

30 *Have you read the guarantee and indemnity and the memorandum of common provisions booklet carefully?*

And she wrote:

35 *Yes.*

on behalf of Ms Flanagan. Do you agree with that?---Yes, I do.

Now, she could have written “no” and then answered the question:

40 *Did you have the documents read out or translated for you?*

But she didn't do that?---That's correct.

45 And can you think of any explanation for why Ms Fletcher just wrote “yes” in response to the question:

Have you –

that is Ms Flanagan –

read the guarantee and indemnity?

5 ?---Hypothetically.

Well, you must have thought that you formed the view that Westpac complied with all its processes in relation to the taking of the guarantee. So what's the view you formed as respect to this question?---The view that I formed in respect to this
10 question is that, as I heard from Ms Flanagan yesterday – it was read out to her – this was an error, in that she should have put no in the box that said if you have answered – she should have put no there and then read – acknowledged that she read the documents out to her that we heard Ms Flanagan say yesterday.

15 All right?---That's what I would have – that's what should have happened.

And you believe that Ms Fletcher met with Ms Flanagan before Ms Flanagan met with a lawyer. Is that right?---Yes. Yes.

20 All right. And that it was at that time that Ms Fletcher, when she met with Ms Flanagan, filled out this questionnaire?---When she went – sorry – it was at – this questionnaire was filled out in the meeting.

So the order of events – yes?---Yes. Yes. Yes.
25

Well, let's make sure we're clear about this?---Yes, please.

The questionnaire was filled out by Ms Fletcher in a meeting with Ms Flanagan?---Yes.
30

And, after that meeting, Ms Flanagan went and saw a lawyer?---That is correct.

That's your belief?---Yes.

35 All right. And then you see question number 3:

*Within the warning box on the front cover of the guarantee and indemnity we have stated that, before you sign the guarantee and indemnity, you should get advice from your own lawyer and from your own financial adviser (such as an
40 accountant).*

You see that? See that question?---Yes, I do.

And below it it says:
45

Answer "yes" alongside one of the following that is true.

See that?---Yes, I do.

And the alternatives are:

5 (a) you got that advice; (b) you got advice from your own lawyer, but not from your financial adviser.

You see those alternatives?---Yes, I do.

10 And the banker has written “yes” next to:

You got that advice.

?---That is correct.

15

Meaning, “you got advice from a lawyer”?---Yes.

And “you got advice from your own financial adviser”?---That – that’s what that says there, yes.

20

And, in forming the view that Westpac properly complied with its process in relation to taking a guarantee, do you have some explanation as to why your banker wrote yes next to that question?---Yes, I do.

25 And what’s that?---When the banker is walking through this with the client, with the customer, and answering these together, they’re filling out the forms to – to help them, I – it’s not uncommon for these to be filled out in anticipation of something happening, so in anticipation that she was going to go and see a lawyer. So my read of these is that she filled out yes here that they had had the discussion about going
30 and seeing a lawyer. So that – that’s – that’s not uncommon, because this document was not intended to be – to be signed here. So they would – it was going to be signed on – at a later date with the lawyer.

35 Let me make sure I have understood the position that you’re presenting, which is that you find nothing surprising, nothing inconsistent with Westpac’s policies, with writing “yes” in advance to the question:

You got that advice.

40 Past tense?---That – that is often the practice.

Within Westpac?---To – to help fill out – to fill the form, yes. Sorry – not often. I don’t know that. That’s – that’s a opinion. You know, it could be the practice at this point in time. It’s not fair to say it’s often, because I don’t know that.

45

All right. And then let’s – I’m sorry – I should just check one other thing, which is there’s then a series of questions, first 4, which is about:

Do you understand that is your risk?

Do you see that?---Yes, I do.

5 That's also filled out "yes". You see that?---It says yes. Yes, I do.

Oddly – oddly, you actually only need to answer that question if you've answered yes to question 3(b), but, nevertheless, for completeness, Ms Fletcher has prefilled out that to assist the guarantor. That's your reading of what has happened?---Yes.

10

And then, if you go over to 5, there's a series of things that the guarantor is asked to confirm that she understands. And the first is:

15 *If you sign the guarantee, you may have to pay the lender a lot of money to repay the debts of the customer.*

The second is:

20 *If the customer does not pay on time money he or she owes to the lender, the lender can demand that you pay the money in place of the customer, or as well as the customer*

The third is:

25 *If you do not pay that money to the lender, then, amongst other things, the lender can sue you, and/or, if you give a mortgage or other security which secures the guarantee, the lender can enforce it.*

30 There's an explanation – a further explanation of what that means, (d):

The lender can demand that you pay money to the lender if for some reason it cannot recover the money from the customer.

35 (e):

You should check for yourself whether the customer will be able to pay his, her or its debts. Even if the lender tells you something, that is, even if Westpac tells you something, you should still check it for yourself and get an accountant to check it for you

40

And then – I just want to understand – each of these is answered "yes" by Ms Fletcher helpfully assisting Ms Flanagan. You agree with that?---Yes, I do.

45 And you don't think that, necessarily, means that Ms Flanagan understood that at the time; this might just mean that, hopefully, she will understand it in the future and Ms Fletcher has helpfully already filled it out. Is that right?---No, that's not right.

So you would expect Ms Fletcher to have at least satisfied herself about these things first. Is that right?---I – I would have expected Ms Fletcher to have a conversation, because this is if you sign the guarantee. And she would be having a conversation with – with Ms – Ms Flanagan. So these would be Ms Flanagan’s answers to the
5 question that she was reading out these as she went, because - - -

Yes, but if she was read out the question:

10 *Have you got legal advice?*

Ms Flanagan’s answer at the time must have been no?---Unless – my hypothesis was that it was in anticipation that she was going to get the legal advice.

15 That’s right?---Yes.

So is it also possible that, in anticipation that Ms Flanagan might understand these things Ms Fletcher wrote down yes?---That she might understand them, did you say?

20 Yes, in the hope she might understand them in the future?---It’s possible.

You just have no idea?---Correct.

25 Because your processes have not been complied with in this case?---No, I don’t see that – I don’t buy that proposition.

All right. And then you see 7:

30 *Have you received a letter from us which attaches copies of the business finance agreement and other documents/statements?*

And, again, the answer is “yes”?---Mmm.

Sorry. You need to say just for the record?---Yes.

35 And have you been able to find any letter addressed to Ms Flanagan enclosing a copy of the business finance agreement and other documents?---I did not. I cannot recall seeing one.

40 And then, if we go to page 5, WBC.104.001.9137. So this is the actual guarantee that has been signed?---Yes.

45 And I just want to make sure we all understand which bits Westpac says were signed when. And, as I understand it, the date at the top, 8 December 2010, Westpac believes that was filled out by Ms Fletcher on 8 December 2010?---Yes.

The signature of Ms Flanagan, Westpac believes, that wasn’t signed on 8 December 2010?---Yes.

And that, in fact, based on pen colours, it was signed two days later?---More than pen colours, I think.

5 I'm sorry. Pen colours and, also, the certification from a solicitor that Ms Flanagan signed it two days later?---The certification of the solicitor was the one that we ranked over the pen colours.

All right. And then there's two witness signatures. Do you see that?---Yes, I do.

10 And one of them is a witness signature of Ms Fletcher, the banker?---Crossed out, yes, I do.

And one of them is a witness signature of the solicitor?---Yes.

15 And Westpac believes that Ms Fletcher signed as the witness without having seen Ms Flanagan sign the document. Is that right?---Yes, I – yes.

20 And that then subsequently, that document – and, I'm sorry – so Ms Fletcher, on 8 December, signed this document as the witness without having seen Ms Flanagan sign the document?---She signed and crossed it out, yes.

Well, did she cross it out or did the solicitor cross it out?---Don't know.

25 And is it normal practice within Westpac for bankers to helpfully pre-witness signatures that they haven't seen done?---Not at all.

30 So this is definitely not in compliance with your processes?---Filling out – sorry – I thought – if your question is do we pre-sign something of witnesses we haven't seen, no.

35 But in this case you have. In this case, the banker has pre-signed as the witness without, on your view, having seen the guarantor sign the document?---Well, in my view, she did this in error and crossed it out. So that's the view I've formed. You've formed a different view.

Or the solicitor crossed it out?---Or the solicitor. That's - - -

But you don't know?---No, I don't know.

40 But, in any event, she certainly signed this document without having seen it first signed by the guarantor?---My view is she signed it in error and crossed it out.

45 And filled out this form of acknowledgement on behalf of Ms Flanagan in anticipation that Ms Flanagan would receive legal advice. Is that right?---Yes, that's correct.

All right. And just go to the – to page .9140. So this is another one of Ms Flanagan’s signatures. This is confirming the form of acknowledgement?---That is correct.

5 And Westpac’s view as to when Ms Flanagan signed this is what?---On the – in front of her – her lawyer.

Okay. So not on 8 December?---That is correct.

10 And who dated it as 8 December?---I don’t know that.

But, in any event, Westpac, on your view, that is, the relevant banker, must have known that that was incorrect, that it hadn’t – the form of acknowledgement hadn’t been signed on that day?---That date is incorrect, yes.

15

And the Westpac banker, receiving that document, must have known that that date was incorrect?---Yes, correct.

20 And would you expect any of this to have put – to have raised concerns about the adequacy of whether – I’m sorry – the adequacy of the following of Westpac’s processes in relation to the taking of this guarantee?---Sorry. The – would I - - -

25 Any of the things that we’ve just looked at in relation to the signing of this guarantee, would you have expected this to create an issue within Westpac as to whether Westpac’s processes were being adequately followed in taking this guarantee?---The – the imperfections, or the – the errors I – would – should have raised some questions, but, as I’ve worked through with you, I think that – I’m comfortable the process was followed correctly.

30 Why not just print a clean copy of the guarantee and let Ms Flanagan take that to a solicitor?---Right there in the meeting?

I assume there are printers in most branches of Westpac?---Yes, there are.

35 Why not just print a clean guarantee and let Ms Flanagan take it to a solicitor?---That – that is an option. Actually, I’m not sure that it is an option, because the – you – control of this document comes from the loan centre, so I have to – I might be stretching it a bit here, but I wouldn’t want documents that could be changed being printed by bankers and business banking centres. So – but I – sorry – I don’t know
40 the answer to that one. But you wouldn’t want just any banker being able to print out any legal – any document and being able to amend it. You would want – normally, the control is we get them from the package from the loan centre done independently.

45 Can you see that having a banker pre-fill out the things that the guarantor understands, including that the guarantor has received legal advice, might have an adverse effect on the likelihood that this checklist will be properly worked through by a lawyer?---In normal circumstances, yes. Ms Flanagan, as she identified, was

not able to see the document. So – you know – I think it was a complex one. You know, it was one that a – that a banker probably wouldn't have normally come across.

5 Well, Ms Flanagan – I'm sorry – Ms Fletcher completed these questionnaires for each of the three guarantors. It wasn't just Ms Flanagan, was it. It was Ms Flanagan and the daughter and the partner?---That is correct.

10 And she just went through and answered yes to all of these questions?---I don't know what she did.

Well, you've got them. You have exhibited them to your statement. Have you looked at them?---Yes, I have.

15 All right. So you know she went through and she filled it out for each of them. Do you want to go and have a look at an example? It's - - -?---No, we don't need to.

Okay?---Yes, she filled them out. Sorry. I misunderstood your question. Did she fill them out? Yes, she did.

20

Okay?---In the same way.

And then with the mortgage, if we go to that, which is tab 28. So this is the mortgage of Ms Flanagan's house in favour of Westpac?---Mmm.

25

And if we go over to the signature page on page 2, .0149. And we see a date at the top, 8 December 2010. Does Westpac have a view as to when that date was filled in?---Yes.

30 And when was that?---On the 10th, as per the – the 10th of the 10th, as per the solicitor's certificate.

So you think on the 10th somebody wrote in 8 December 2010?---Sorry.

35 If you have a look at the top - - -?---I might have misunderstood your question. Sorry.

I understand. I understand. It's not your fault, Mr Welsh. You're here to attempt to explain this. You didn't do it. If you have a look at the top of the page, you see date

40

- - -?---

- - - 8 December 2010?---Yes, I do.

45 When do you think that date – or when does Westpac think that date was filled in?---I would imagine – sorry – I misunderstood your question. The 8th of the 12th of 2010, I think. The date is the date.

And then, again, we see a signature of the mortgagor, that's Ms Flanagan. And, as I understand it, Westpac believes that was signed on 10 December 2010 with the solicitor. Is that right?---That's correct.

5 And there are two witness signatures, one of which is crossed out?---Yes, that's correct.

And the crossed out one is the banker?---Yes, that's correct.

10 And that's normal practice of Westpac, is it, for a banker to pre-sign a mortgage as a witness?---No, it's not.

And this, of course, is something that has been – this is not new. Westpac has known about this for some time. It went to FOS. This didn't raise red flags as to what on
15 Earth was going on? Did you investigate it? Did you try and understand what had happened? Did you look into why it was that a banker was pre-witnessing a mortgage?---Have – have I looked into it or – sorry.

Have you or anybody else at Westpac looked into it?---I can't comment on whether
20 other people have – have looked at it. I didn't look at that. I – I looked at this. And, interesting enough, as you rightly point out, FOS made the same conclusions that I have, as well in their report. So, you know, I – I tended to focus on that part of it.

Well, let's talk about exactly what it is that you're focusing on. What you're
25 focusing on is ultimately Ms Flanagan signed these documents with a lawyer present. That's your point?---Yes.

But the questionnaire that had to be filled in was filled in by Ms Fletcher at an earlier
30 time?---Yes.

You can't find a record of having provided copies of the business lending agreement to Ms Flanagan?---No, that's not correct.

You can?---No. No. You – you asked – so there's a record that she – the certificate
35 that she had signed later that she gave the business finance agreement. What I said earlier – and, again, might have – the letter – you asked me whether the letter attached to that. I haven't seen that letter. But I have seen the business finance agreement, I have seen her certificate that she – she gave the business finance agreement to Ms Flanagan.

40

Sorry, you have seen the banker's certificate. Is that right?---Yes. Yes. Yes.

All right. The same banker who pre-signed as a witness for a mortgage?---The same
45 banker.

And then, if we go to exhibit – I’m sorry – tab 26 to the exhibits to your statement. So this is the document that the – I’m sorry – the declaration that’s made by Ms Flanagan in the presence of the solicitor?---Yes, it is.

5 And it appears as if each part of it is filled in, save for the signature of Ms Flanagan, by the lawyer? Ms Flanagan’s name, her address, who the borrower is, what the bank is, what the property is, what the two documents are, that’s all filled in by the lawyer?---It does look to be similar writing to their name and address.

10 And then the only thing that Ms Flanagan has signed on that page is as the signature of declarant?---Yes, that’s correct.

And you see paragraph 2 of the declaration is:

15 *I have received independent legal advice regarding the loan and security documents referred to in paragraph 1.*

?---Yes.

20 And the loan and security documents are said to be certain loan and security documents between the borrower and Westpac?---Yes.

And do I understand you to say Westpac believes that at some point in time it provided those documents to Ms Flanagan?---Yes. Yes.

25

And when does it believe that it did that?---In that meeting that we talked about on the – the 8th, and – yes. Yes, they were.

30 And the basis – so, just to be clear, Westpac doesn’t think that it had been provided those documents before 8 December?---Thank you. I’m – I don’t have a view on that. I know that they were – actually, I assume that they were provided in the meeting, because she had to take her through them. So that’s an assumption on my behalf.

35 All right?---Yes.

And then can we bring up – this is an exhibit to Ms Beiglari’s statement. This is tab 7, RCD.0024.0001.0111. So you’re aware that Ms Beiglari wrote to the solicitors and asked for a copy of the file?---Yes.

40

And you will see this is the letter that the solicitor sent in response, which is:

Please find enclosed our file for Ms Flanagan as requested.

45 ?---Yes, I do see that.

And can we just have a look at the documents that are in the file. The first document is a Certificate of Title. That's page .0112?---Yes, that is a Certificate of Title.

5 And then the second document, starting on page .0113, is the guarantee?---Yes. Yes.

And then the third document, starting on page .011 – I'm sorry, we will go through this. The next page .0114. This is the next page of the guarantee. Then .0115. This is the next page of the guarantee. Then .0116. This is the next page of the guarantee. Then .0117. This is the declaration that Ms Flanagan made?---Yes.

10 And then .0118. This is the first page of the mortgage. And then .0119. This is the second page of the mortgage?---Yes.

15 And we can have the operator confirm, but, as I understand it, there are no more pages in this exhibit. Now, I am going to ask you two questions. The first is you see on this page the mortgage is undated?---Yes. Yes, I do.

20 So what appears to have happened is, first, presumably on 8 December, the banker at Westpac has signed as the witness without having seen the mortgagor sign. That's Westpac's view as to what happened?---Mmm.

Is that right?---Yes.

25 And then either the banker or the solicitor has crossed out the banker's name?---Yes.

And then the mortgage has been taken to the solicitor and Ms Flanagan has signed as mortgagor. And that has been witnessed by the solicitor?---Yes.

30 And there was no date on it at that time?---On – there's no date on this - - -

When it was witnessed by the solicitor?---There's no date on the .0119. Is that the one - - -

35 That's right?---Yes. Yes, I can see that.

And then somebody has filled in the date after 10 December 2010 as 8 December 2010?---It appears that way, yes.

40 And do you know who did that? Was it somebody within Westpac?---I don't know.

45 No. And the file doesn't seem to include any copy of the business lending agreement. What I'm wondering, then, is the only thing that Westpac can point to to indicate that the – a copy of the lending agreement was provided to Ms Flanagan so that she could take it away that something was – there has been some form that has been filled out by the banker?---The – sorry – I'm not quite sure of your question. I'm just a little lost here.

I'm just trying to understand what is the thing that Westpac points to in order to be able to say the business lending agreement was given to Ms Flanagan on 8 December and she took it away?---The interview checklist under tab 30.

5 Okay. And so if we go to tab 30. If we bring that up. This is a checklist completed by Ms Fletcher on 14 December 2010?---That's correct.

And, as I understand it, Westpac wouldn't expect this checklist to be completed on the day that these things actually occurred?---That's correct.

10

And - - -?---Not always the case, but that's correct in this case.

Well, it's - I just want to clarify that. You mean there might be occasions on which a banker does complete the interview checklist on the same day as they conduct the interview?---If they've got all the documents back at the same time. So depending on the circumstances. Because there are different circumstances for different deals. So I just wouldn't want to be - you know, the - this was the right approach for this circumstance, yes.

20 Why was that?---Because the - in this circumstances, they met on the 8th, and then on the 10th they went away and saw the - the lawyer. So they would have - this is - this is the sort of final checklist that our banker would complete as they packaged up all the documents to - to send to the - to the loan centre. So you've got to get all the documents back and all the things have got to be worked through. And I did go and check the date on that, because I think the - I think this was a Tuesday. So there was a weekend there, and when she came - the banker came back, she packaged it all up and filled it out. That's my read of this, anyway.

30 I'm not sure I understand why it's necessary to fill this out after the guarantor has met with the solicitor. Let's have a look at the questions. Question 1:

Have you met the guarantor and given him or her the guarantee pack personally, which includes a copy of the guaranteed transaction?

35 And the answer is yes?---Mmm.

Question 2:

40 *Have you during the interview pointed out or read out to the guarantor the warning on the front cover?*

And the answer is "yes". See that?---Yes, I do. Sorry.

Question 3:

45

Have you recommended the forget legal advice and financial advice?

And the answer is “yes”. See that?---Yes.

Question 4:

5 *Have you given the guarantor the chance to take the guarantee pack away to read the guarantee and other documentation?*

And the answer is “yes”?---Yes.

10 Question 5:

Have you told the guarantor fully and frankly of the financial problems affecting the borrower (if any), that is only your understanding of the position and he or she should check the position?

15

?---Yes.

And the answer is “yes”. Question 6:

20 *Have you told the guarantor to get an accountant to check the position of the borrower?*

And the answer is “yes”?---Yes.

25 Question 7:

Have you informed the guarantor of the bank’s requirement that it will require a statutory declaration witnessed by a solicitor who does not act for the bank, the borrower or other interested party in this transaction, before the facility can be made available?

30

And the answer is “yes”?---Yes.

35 And what is the reason why that couldn’t be completed until after Ms Flanagan had seen a solicitor?---It could be.

Sorry?---It could be.

40 But does Westpac expect it to be, to be completed contemporaneously with it – with the interview?---There’s – there’s – no.

And the relevant answer that you say is satisfactory confirmation from Westpac’s position that Ms Flanagan was given a copy of the finance agreement is number 1. Is that right?---Yes.

45

Because it includes a copy of the guaranteed transaction. Is that right?---So in the guarantee pack – part of the guarantee pack under the code is that you’ve got to have

the letter of offer, the business finance agreement. So that – that’s – where she’s referring to the pack there, that pack has to have the – the business finance agreement.

5 All right. And if we just go over the page to page .0236?---On which – sorry – I’m lost now.

In the – it should be in that same tab. I’m sorry, it’s - - -?---I’ve moved around a bit, I think.

10

It will be up on the – I’m sorry – WBC.407.001.0236?---Yes. Yes.

So I think this is in your page which is separated?---I’m with you. I’m following now, yes.

15

So this is a document that is setting out the witnessing requirements for New South Wales?---Mmm.

And I just want to understand where does this document come into the picture?

20

When is this provided?---I don’t know that, actually.

All right. And – so then you see down for bank use only:

25

Where documents are signed in the presence of a bank officer –

And there’s the name of the mortgagor and the mortgagor is named as Ms Flanagan?---Mmm.

Do you see that?---Yes, I do.

30

And the name of the witness is said to be the banker?---Yes.

And the date is said to be 14 December 2010?---Yes.

35

Can you explain what’s going on?---No. No, I can’t.

All right. Now, out of – I think out of fairness to you, just so you can make any point you want to make about it, I understand that colour copies of the mortgage and guarantee are now – have now been uploaded. I will just bring those up. That’s
40 WBC.104.001.9530. And, unfortunately, I haven’t been given the pages, but I understand this is a 70-something page document. So perhaps if I just – I will just speak to my friend for a moment, Commissioner. Can we start with .9590. So this is the declaration. And is there a point you want to explain about pen colours and what inferences you draw from that, Mr Welsh?---So, as part of my investigation, I asked
45 to look at the originals, because there was a hypothesis here when I read Ms Flanagan’s statement that her stat dec said she hadn’t been to a lawyer. So I looked at this and went, you know, can you show me the documents, kind of old fashioned

banking, go back to the real paper. And I had a look at signatures. And, first, I wanted to get comfortable that the signature was the same. And, second, I wanted to get comfortable, you know, what do the pens look like. And it's a bit of a stretch, but I was looking at it going the pens look similar. So that was the intent. I hadn't
5 intended this to be our conversation, though, but that was my intent.

No, I understand. I understand. You were diligently just trying to find out exactly what had happened. And I think, to be fair to you, the point you are making is – and it is easier for those of us who have seen the originals to observe this – that the pen
10 used to sign by Ms Flanagan appears to be the same or similar to the pen used to be signed by the solicitor?---That's the point.

And then if we go to the guarantee, which is .9582, and go to .9586?---Yes.

15 This is a bit harder, but it looks like the pen used to sign by Ms Flanagan is the same as the pen used to sign by the solicitor?---I am not a writing expert.

I understand. No. No?---So I am on dangerous ground here.

20 And it may well be – and it seems – it's a little unclear whether it's the banker or the solicitor who has crossed out Ms Fletcher's name?---Agree.

That's your point?---Yes. Yes.

25 And if we go to the mortgage, which is - - -?---I am not claiming to be a writing expert, though, just - - -

No. No. I understand?---Please.

30 Actually, we should go to the form of acknowledgement, which is .9587, and go over two pages. And it's unclear. It might be that the signature there is using the same pen as was used by the solicitor. I understand. And then the mortgage, if we go to .9635. And go over the page. Go over another page. And, again, because it's
35 blacked out, it is easier for those of us who have seen it to say it looks like the pen that has been used by Ms Flanagan to sign is the same as the pen used by the solicitor. That was the conclusion that you came to?---Yes, it was.

And, on that basis, Westpac says that it's entitled to rely upon the guarantee?---Correct.
40

And it maintains that there were no problems with its process in relation to the taking of the guarantee?---Yes.

45 And it maintains that there were no problems with respect to the making of the loan in the first place?---Yes.

Because if it had failed to act as a diligent and prudent banker in either of those respects – no. Actually, I will take them one at a time. If it had failed to act as a diligent and prudent banker in making the loan in the first place, then do you agree that it would not be permitted to rely upon the guarantee?---If we hadn't been - - -

5

If Westpac had failed to – it may be that your answer to this is you are not sure?---I'm not a lawyer.

You're not a lawyer. That's fine?---I'm not quite sure of the - - -

10

All right?---Of the details. That's another one out of my depth.

Have you heard of Doggett's case?---I am not a big case reader, I must admit. That's not my choice of reading. You have had me on a few, but that's not one of them.

15

All right. But the end consequence was that when Westpac came to seek to enforce the mortgage, Legal Aid took Westpac to FOS. You know that?---Yes.

And at FOS, Westpac maintained, first, that it was appropriate to take the guarantee. There was no problem with the taking of the guarantee?---Yes.

20

And maintained that it was appropriate to make the loan?---Yes.

And, at least at that point, as I understand it, maintained that the hardship policy didn't quite – this wasn't a suitable case for hardship, because Ms Flanagan was a disability support pensioner, so it just didn't seem like there was any realistic prospect that this was a short-term thing?---We made an error here, yes.

25

And that's the particular error that, in your view, Westpac made, is the application of the hardship policy?---We forgot this was about Ms Flanagan.

30

Yes?---We got into – my read of the documents is we got into legal process and what FOS said and who was on what base and what the thing was when – where Ms Flanagan when we had identified in her FOS hardship that, you know, she was looking to stay in her home. And when we finally cut to the chase of that, that's what we did. We gave her life tenancy for her home.

35

And now, under the deed that has been entered into, as you say, Ms Flanagan has a life tenancy in her home?---Yes, she does.

40

If she needed to move out of her home and wanted to sell her home before she died, then Westpac would, under its security, take \$170,000, plus three per cent accruing per annum?---That's what the deed says.

45

And so if, for example, she needs to, for health reasons, move into some other environment, she couldn't sell her home to fund that without first having to discharge

Westpac's mortgage – or Westpac – first having to pay out Westpac?---That's correct.

Thank you, Commissioner. I don't have any further questions.

5

THE COMMISSIONER: Yes. Ms Neskovicin, how long do you expect to be?

MS NESKOVCIN: Five minutes.

10 THE COMMISSIONER: We will come back at 2 o'clock, because I have some questions I want to ask. 2 o'clock.

ADJOURNED

[1.01 pm]

15

RESUMED

[2.00 pm]

20 THE COMMISSIONER: Mr Welsh, I wanted to – before you begin, Ms Neskovicin, I wanted to ask you some questions. Did the bank know at the time it took the guarantee that the guarantor was on a disability support pension?---I don't know that.

Did it know anything about the income state of the guarantor?---I don't know.

25

I want to put something to you quite squarely, so you need, perhaps, to take a moment to think about it before you answer. I want to put to you squarely that the processes which the bank went through to determine whether the guarantor stood to obtain any financial benefit were processes that were more form than substance.

30 What do you say to that understanding of what happened in this case?---Yes, I – I think that's a correct assumption. It was more form. And the substance was more anchored in the security position and not anchored in the understanding of Ms Flanagan's income – or potential to pay back the debt, other than realising on the asset in the worst case scenario.

35

My question was particularly directed to determining whether she stood to gain anything - - -?---Sorry.

40 - - - from her association with the business. There was reference in the papers to the wages, reference to shareholding?---Mmm.

45 What I want to understand is what response you would make to an assessment of those inquiries as form rather than substance, or, if you like, box ticking, rather than looking at the reality. Now, it's put very tendentiously, so that you may face it squarely and deal with it?---I – I think that's right. The process is to make sure that you check that there's going to be a commercial benefit. There's not any substance behind that to make sure that it's going to happen and it's – and it's locked in and it's

part of the company rules and regulations, and there's a pathway to see if dividends were the one. So I think it's tenuous at best.

5 Because what's – I'm so sorry. Do finish. No, you finish. Your answer matters?---Tenuous at best.

10 Because the next question is then why do it? If it's form, rather than substance, why do it?---If I may, I would argue that – I would just like to – I hear your question, but there's something that's troubling me a bit, because - - -

Yes, that's why I'm asking you?---Okay. Thank you. Thank you. Thank you.

So you can – and, putting it as tendentiously as I can - - -?---Thank you.

15 - - - so that you can face it squarely?---There's a reality in that many parents want to back their children. It's - - -

Yes?---They want to be able to do that.

20 It doesn't come to me as a surprise, Mr Welsh?---It's true. And – and the reality is that – you know, in Australia society, we're often asset rich and cashflow poor. And there's a reality that many businesses, particularly for the young, today, it's damn hard to access finance and – and actually to build up a bit of a nest egg. And even in the innovative world today, there's less likely to be any security in their own – their
25 own way. So the support of parents is – is – is critical.

30 Yes?---The support of a guarantee for many small businesses is critical. The – the way the current laws and regulations work is you do have to be able to show commercial benefit. And the question is should that always be the case when a parents' backing their children? That's one question. And then the other question is, if they are, how do we want to evidence – evidence that? So there's a number of questions that flow from that, I think, because I think it's a pretty critical issue for Australian business and for the Australian economy, and – and for the future.

35 I understand that. And it's that sort of issue that I just wanted you to tease out, as far as you felt you could or thought it desirable to tease it out. Now, if there's anything more you want to add, add it. If you think silence is the best course, silence is always the best course, Mr Welsh, up to you?---Silence.

40 With an offer like that, who can refuse?---Thank you for leading the witness.

Who could refuse an offer like that, Mr Welsh. Ms Neskovicin.

45 MS NESKOVCIN: Thank you, Commissioner.

THE COMMISSIONER: You have heard your witness say he prefers silence. Have you got anything to ask?

MS NESKOVCIN: I do.

5

Mr Welsh, you were asked some questions this morning about the cashflow projections. They're at tab 13 of your witness statement. The document ID is WBC.407.001.0067?---Yes.

10 Later you were asked some questions about how the cashflow projections worked into the EBITDA in the serviceability worksheet?---Yes.

And you were asked some questions as to whether or not a source could be identified for the cashflow projections?---Yes.

15

Can I ask you to go to the fourth page, which is 0070?---Yes.

This is headed – you have seen this before. In fact, you took Mr Hodge to this?---Yes.

20

But you weren't taken to the note:

25

The above gross sales figures for financial years 2009 and 2010 are mobile only invoiced sales. These gross sales figures have been reported by the previous franchisee, are unaudited and Poolwerx have charged service fees on these figures to the franchisee.

Do you consider that an appropriate source document for the business banker in assessing the cashflow projections?---As evidence of the historicals?

30

Yes?---Yes.

Is there something more that you would have liked to see?---I – I would have liked to have seen the full historical, so you could see the expenses and things, if they were available.

35

And what is the business banker to do if they cannot or will not be provided?---The business banker has to work with what they're provided to try and frame up the deal. And, if they can't, then they have to make a call that they may not offer finance if they – if they can't get comfortable with the information they've got.

40

Thank you. Mr Welsh, yesterday you were asked some questions in relation to the franchise policy and the sector value ratio. Could you go to tab 2 of that folder, please. And the document ID is WBC.410.001.9483. And it's at page 9628?---Yes, I have it here.

45

I don't think you were specifically directed to the paragraph, but under the heading Target Market there's a second paragraph:

5 *Lending under this policy is based on the amount Westpac is prepared to lend against the cashflow of an accredited system. This amount is the sector value ratio, ie, the ratio of the loan amount to the turnkey value of the business.*

10 Was that what you were referring to in terms of the sector value ratio and in the context of the franchise policy?---Yes.

15 You were asked some questions in relation to that. Is it possible for yesterday's transcript to be brought up. In particular, at page 2071. It's around line 22, Mr Welsh. You were asked to explain why the Poolwerx loan in this case study was not assessed under the policy. And you will see at line 25 you said:

20 *The main reason why it wouldn't have qualified for this one is because they wanted to borrow 100 per cent of the value and there's a – what we call in here – a sector value ratio we refer to in good banking terms as SVR. Typically, what that – that's a sort of debt capacity, how much can they afford. And it would, typically, be about 50 to 60 per cent.*

25 Did you mean how much they can afford – or what did you mean by that?---It's the – the – the debt sizing, what the typical amount that we would be prepared to lend against that. And then the affordability will be assessed by the interests cost cover and – and the cashflow.

 All right. Can we go to the next page of the transcript, please. At line 6 you were asked this question by Mr Hodge:

30 *Does that mean, therefore, that if a borrower is buying 100 per cent of the value of the business, Westpac wouldn't expect that the business would be... able to support that level of debt?*

35 You said:

Yes, that's correct.

40 Do you wish to clarify that?---The business – so that's – that's not correct. The business would – still would – may be able to service that debt from the – from the cashflows, but we wouldn't be lending using the SVR and the franchising policy to allow that to happen.

45 Thank you. The final matter, Commissioner, is that, as you heard a short while before the end – before the lunch break, we provided the originals of the guarantee mortgage and declaration for inspection. Mr Welsh was taken to them in cross-examination, but they haven't been tendered. Can we, please, request the tender of that document. I can give you the ID.

THE COMMISSIONER: Yes. When were those documents first brought to light, Ms Neskovicin? Because I think I am right in saying that the Commission was looking for originals for some time, was it not?

5 MS NESKOVCIN: I'm not – they're not my instructions.

THE COMMISSIONER: Well, I won't go into it.

MS NESKOVCIN: Mr - - -

10

THE COMMISSIONER: Exhibit 3.13 will be Westpac file concerning Flanagan, WBC.104.001.9530.

15 **EXHIBIT #3.13 WESTPAC FILE CONCERNING FLANAGAN
(WBC.104.001.9530)**

MS NESKOVCIN: Commissioner, the protocol for producing documents is
20 electronic copies. I am not sure when inquiries were made for the originals. I can find out. Certainly they were brought to my attention on the weekend, and Mr Welsh said that he looked at them on the weekend, as well.

THE COMMISSIONER: I'm a little surprised they were drawn to attention at five
25 to 2 yesterday, five minutes before the evidence was to begin, Ms Neskovicin. Yes.

MS NESKOVCIN: Thank you, Commissioner.

THE COMMISSIONER: Yes.

30

MS NESKOVCIN: May Mr Welsh be excused temporarily. He will be coming back tomorrow.

THE COMMISSIONER: No, he may not be excused. You may stand down, Mr
35 Welsh. We will see you again later in the week, I fear. Thank you?---I too.

<THE WITNESS WITHDREW

[2.14 pm]

40

THE COMMISSIONER: Mr Hodge.

MR HODGE: Could I just clarify, something, Commissioner. Is what just got
45 tendered the colour copy that has been provided or would Westpac prefer to tender the actual originals?

THE COMMISSIONER: I would prefer the original to be tendered as part of the exhibit – as the exhibit.

5 MS NESKOVCIN: It is available in the hearing room and we will - - -

THE COMMISSIONER: And the - - -

MS NESKOVCIN: - - - hand that up.

10 THE COMMISSIONER: And the original document should be tendered, I think.

MS NESKOVCIN: It's an entire security packet which we've kept together to maintain the integrity of the file.

15 THE COMMISSIONER: I'm sorry, Ms Neskovicin?

MS NESKOVCIN: It's an entire security packet.

20 THE COMMISSIONER: Yes.

MS NESKOVCIN: And we will tender the original.

THE COMMISSIONER: Yes. And are they still current - - -

25 MS NESKOVCIN: Yes.

THE COMMISSIONER: They're current.

30 MS NESKOVCIN: Yes. So it has the certificate of title on it. You might like to - - -

THE COMMISSIONER: Well, you can remain chained to those, Ms Neskovicin, and tender colour photocopies of them. And the originals can stay in the custody of your solicitors. But they are to be available for inspection by the Commission on
35 reasonable notice.

MS NESKOVCIN: Yes, Commissioner.

40 MR HODGE: Commissioner, the next witness is going to be Ms Gibson from ANZ. Can I just – perhaps, just indicate what we propose occur for the remainder of the afternoon, which is that we begin Ms Gibson, and at about 3.30, we will interpose a consumer witness for the next case study, who is available this afternoon. And then we will – I expect we won't have concluded Ms Gibson by then, and we will
45 conclude Ms Gibson tomorrow morning.

THE COMMISSIONER: Yes. Yes.

MR HODGE: Would it - - -

THE COMMISSIONER: Just while we're talking about those things, can I say to those at the bar table and those who are about to take their place at the bar table,
5 tonight can you take – be sure to take away all your books, papers and the like. I think we are likely to be getting scissor lifts in tonight to look at the two projectors. So it would be very important if those who are at the bar table make sure they clear away all their papers and belongings.

10 MR HODGE: Thank you, Commissioner.

THE COMMISSIONER: Yes.

MR HODGE: Commissioner, would you like to adjourn for five minutes while we
15 switch all of the parties around.

THE COMMISSIONER: I will come back at 2.20.

20 **ADJOURNED** [2.17 pm]

RESUMED [2.20 pm]

25 THE COMMISSIONER: Mr Hodge.

MR HODGE: Commissioner, the next witness is Ms Gibson, who I think Dr Collins will call.

30 THE COMMISSIONER: Dr Collins.

35 **<KATE GRIFFTHS GIBSON, AFFIRMED** [2.21 pm]

<EXAMINATION-IN-CHIEF BY DR COLLINS

40 THE COMMISSIONER: Thank you very much. Do sit down. Yes, Dr Collins.

DR COLLINS: Yes, thank you, Commissioner.

45 Is your full name Kate Griffiths Gibson?---Sorry. I'm just trying to put this seat down a bit. I feel perched. Yes, it is.

THE COMMISSIONER: First things first. Get yourself comfortable, Ms Gibson, and rather than - - -?---It's not working. All right. I will just sit forward.

You set?---It will be fine. Yes.

5

Okay. Now, Dr Collins.

DR COLLINS: I think I got the witness' name?---Yes.

10 Is your business address 833 Collins Street, Docklands in Victoria?---Yes, it is.

And is your occupation general manager home lending at the ANZ Bank?---Yes, it is.

15 Ms Gibson, have you received a summons to be here today to give evidence and to produce witness statements?---Yes, I have.

And do you have a copy of that with you in the witness box?---Yes, I do.

20 I tender the summons.

THE COMMISSIONER: Summons to Ms Gibson is exhibit 3.14.

25 **EXHIBIT #3.14 SUMMONS TO MS GIBSON**

DR COLLINS: Ms Gibson, have you made a witness statement under the Commission's nomenclature Rubric 3-7 for the purposes of the hearings of the Royal
30 Commission?---Yes, I have.

And do you have your witness statement with you in the witness box?---Yes, I do.

35 Ms Gibson, are there some amendments to be made to your statement by way of correction?---Yes, there are.

Is the first – could you go, please, to paragraph 27 on page 11. And on the second line of paragraph 27, after the words “as required”, do you wish to insert the words “, for example,”?---Yes, I do.

40

Could you write that on the statement and just initial in the margin. Is there a further correction to be made in footnote 31 on page 14?---Yes.

45 And is the correction to delete the word “laptop” and substitute the word “computer”?---Yes, it is.

Would you make that change and initial it. And could I ask you to turn to page 24, table 13. And in the second column, where it says financial and then weight 20 per cent, do you wish to insert the figure 10 per cent underneath the figure 20 per cent?---In italics, yes, I do.

5

In italics, or in some way to distinguish it. In the box immediately below that where you see the figure 40 per cent, do you wish to insert the figure in italics 45 per cent?---Yes, I do.

10 And in the box below that, beneath the figure 25 per cent, do you wish to add the number 30 per cent?---Yes, I do.

And, Ms Gibson, is the difference in those numbers that the typed figures are the figures for the financial customer and process weight in the first half of 2014, while the figures you have just added are for the second half of 2014?---That's correct, yes.

15

Yes. Thank you. Ms Gibson, with those corrections, are the contents of your statement true and correct?---Yes, they are. I'm just making that note here.

20 Commissioner, I tender the statement in Rubric 3-7 and the exhibits thereto.

THE COMMISSIONER: Exhibit 3.15 will be the witness statement of Ms Gibson relating to Rubric 3-7 and exhibits.

25

EXHIBIT #3.15 WITNESS STATEMENT OF MS GIBSON RELATING TO RUBRIC 3-7, AND EXHIBITS

30 DR COLLINS: Thank you, Commissioner.

THE COMMISSIONER: Yes, Mr Hodge.

35 <CROSS-EXAMINATION BY MR HODGE

[2.25 pm]

MR HODGE: Thank you, Commissioner.

40 Ms Gibson, you've been the general manager of home lending at ANZ since March of this year?---Yes, that's correct.

From March 2014 to May 2017 you were the General Manager Small Business Banking at ANZ?---Yes, that's correct.

45

And in that role you were responsible for leading the national team of around 800 small business bankers?---Yes, I was.

And through your, both current and former, roles you've gained a good understanding of ANZs business lending operations?---Yes, I have.

5 And, in particular, you have a very detailed understanding of the operations of ANZs small business team?---I have a good understanding of it, yes.

Okay. And of the different products that are offered by ANZ small business banking team?---Yes, I do.

10 And of the policies and procedures that apply to work undertaken by ANZs small business banking team?---Yes, I do.

And you've been put forward by ANZ as their witness to respond to a particular case study?---Yes, I have.

15 And we will come to the detail of this, but that case study concerns the lending to purchase a gelato franchise?---Yes, it does.

20 All right. And I want to ask you some questions to begin with just about the size of ANZs small business banking operations. As we understand it from your statement, the small business banking team deals with lending to businesses of up to \$1 million. Is that right?---Where the customers have total business lending with ANZ of 1 million, yes, that's correct.

25 Sorry, where the customer has total business lending of \$1 - - -?---Yes.

30 - - - million with ANZ? So it's not a particular loan is up to \$1 million; it's the total size of the lending?---Yes. It could be an individual loan up to 1 million, but if the customer had multiple loans that took them over the 1 million, then that would move out of small business.

35 Okay. And as at December 2014, ANZs total lending in Australia was approximately \$357 billion? Would it help if I brought up your statement?---I'm sorry. Yes. I don't actually have any of my statement in front of me.

You don't have any of your statement. That's unfortunate?---No, I just handed it in. Sorry. Thank you.

40 Now, that probably means you also don't have your exhibits?---No, I don't.

45 Perhaps if we could make arrangements to provide the exhibits to you. While that's happening, though, I will just bring it up on the screen. If we bring up Ms Gibson's statement and go to paragraph 20 on page ANZ.999.009.0073. Perhaps that is more helpful?---I think it might be easier on the hardcopy, if it's page 9. Yes.

So just if we can - - -?---Thank you.

- - - understand these figures. The total lending of ANZ within Australia in December 2014 was approximately \$357 billion?---Yes, that's correct.

5 And the – what's referred to there as business lending, but I understand means small business lending - - -?---Yes.

- - - was about \$12.8 billion?---Yes, that's correct.

10 That is, to customers with total facilities of under \$1 million – total facilities with ANZ under \$1 million?---Yes.

And then, by December 2017, the total lending of ANZ in Australia had risen to just over \$418 billion?---Yes.

15 And, again, lending to small business had risen to about \$14.85 billion?---Yes.

20 And if we then bring up paragraph 23, which is over the page, the number of customers that ANZ had within business lending, but I understand, again, refers to the small business lending section, rose from 114,263 to 131,446 between 2014 and 2017?---The number of customers looked after by small business that had business lending, those – that's the numbers there. Yes, the total – there are many customers who didn't have lending who were also looked after by small business. This is just the customers with lending.

25 Thank you. And then if we go to paragraph 35 of your statement, which is on page 12, ending .0076. You set out some figures showing the change in business lending loans submitted. Again, this is loans submitted as part of the small business section?---Mmm.

30 Is that right?---Yes.

And in 2014, there were 38,251 submitted, and by 2017 that had fallen to 21,619?---Yes, that's correct.

35 And the total dollar value of the loans submitted had also fallen from about \$5 billion to about \$3.5 billion?---Yes, that's correct.

40 But the average loan amount had risen from 132,000 or almost 133,000 to almost 159,000?---Yes, it had.

And then, over the page, you've got some figures that deal with the loans actually approved. We see that the number approved has fallen between 2014 and 2017 from 34,000 to almost 19,000?---Yes, that's correct.

45 And, again, the average loan amount has increased, but the dollar value of those approved has fallen commensurate with the fall in the number approved?---I haven't actually looked at why it has, but it has fallen, yes.

All right. And what I'm interested in understanding is just so we can get an understanding of what's happening with small business lending, at least from the perspective of ANZ. What's the reason, as you understand it, for that fall in the number of applications for loans being submitted and approved?---The discussions
5 that we had at the time were with regard to the fact that the small business segment had become one that was of interest to a lot of financial institutions. There were a number – it became more competitive. There were new entrants into the market by way of Sintex, who were also offering lending options to small business customers. And we – we – that was what we put it down to.

10 Thank you. Now – sorry – when you say – I should just clarify this. When you say discussions at the time, you mean discussions within your team when you were still with small business lending over the last few years. Is that right?---Yes, I do.

15 And you – one of the things you would, obviously, be interested in understanding is why do we have such a fall-off in the number of applications we are receiving?---We're always trying to understand how many applications we're receiving. And, you know, we were – we – for a variety of reasons, one of which
20 being that we needed to work with other operations teams within the bank to tell them how many applications we expected to come and, from a financial forecasting point of view, how we wanted to understand what we thought that the financials were going to be. And this is, obviously, one of the inputs to that.

25 And do you recall whether there was consideration as to whether what was happening for ANZ was, as ANZ understood it, reflective of what was happening for the other major banks?---I'm sorry. I am not sure I entirely understand your question.

30 Well, what your figures show is that there was this fall-off in the number of loans being applied for – or submitted for consideration for small business lending between 2014 and 2017. We agree about that?---Yes.

35 And you've identified that when you considered this internally, the reason that was identified – the most likely reason, perhaps, was that there was just increased competition coming from the Sintex base and other – other possible lenders?---Yes.

40 And did ANZ have any insight as to whether or not its experience, which was a drop-off in the number of loans being sought by small businesses, was reflective of the experience of the other major banks?---Well, obviously, we didn't have inside knowledge of the other banks' experience - - -

Of course, I'm not - - -?---I was – sorry. No - - -

45 This is just a general market question that I'm trying to understand?---It was based on the feedback that we would get from our front line staff that they felt that they were, you know, finding that the people that they were talking to had other options, and they, you know, would talk to us about particular other banks who might be in

market with, you know, aggressive marketing campaigns, particularly attractively priced offers and so forth. So, anecdotally, it seemed competition was going up, but as to whether or not other banks were seeing a drop off or an increase, I don't know.

5 That is, whether this is a loss of small business customers to other major banks or a loss of customers to alternative finance providers was unclear?---There is a – a lack of, you know, clear data about that. So it was – we had to deduce it from inference.

10 All right. I want to, then, move to another general topic which is ANZs lending to franchises. And you explain at pages 7 and 8 of your statement in paragraph 14 the distinction between panel franchises and non-panel franchises. Could you just explain that distinction to the Commissioner?---Yes. The – ANZ had – I suppose there were three types of small business applications. Those that were general applications, and then for certain franchise systems that had accreditation with ANZ, 15 we called them accredited franchises, and they were on the panel. There were also some franchise systems that had preferred status, who were also on the panel, but that was a – that didn't lead to any specifically different treatment of applicants from that system, relative to general applications.

20 So an accredited franchise would be one where ANZ was prepared to, effectively, lend against cashflow up until a certain value?---For – for all of our small business customers under – we would consider lending against cashflow. The distinction for – that was made for the accredited – franchisees of an accredited franchise system was that we would, firstly, assess the applications of those franchisees against 25 specific measures for the system that was accredited. And, yes, we would, in some circumstances, be prepared to lend more than the 50 per cent value of the business that we would generally have limited our lending to for non-accredited franchise applicants.

30 Sorry. Could you – if you wouldn't mind just expanding on that. Did you say there would be a 50 per cent limit for non-accredited franchises?---So our approach to small business applicants who were buying into a business was that if the business – look, I'm just picking round numbers – if you were going to buy into a business for 200,000, we were prepared to lend without tangible security, but only up to 50 per 35 cent of that price. We would seek to see that the purchaser – the owner, the small business owner was contributing at least 50 per cent of that purchase price. That ratio was slightly different for some of our accredited franchise systems. It was slightly higher. We were prepared to lend perhaps 60 per cent, rather than 50 per cent.

40 And for accredited franchises you had better insight into the financial state of the franchise?---Yes, we did.

45 Because you had required the franchisor to satisfy certain requirements in terms of providing financial information?---For the accredited franchise systems, yes, they had to provide that, and then we would reassess them annually.

And then – I am sorry – did you say reassess them annually?---So each year, for an accredited franchise system, they would provide updated figures to us.

5 And then in paragraph 15 of your statement you're explaining the proportion of lending at the moment, that is, to panel franchises, franchisees of the total small business lending. It's about 2.75 per cent?---Yes, that's correct.

10 And in paragraph 16 you're explaining the proportion of lending to non-panel franchisees of total small business lending. It's almost two per cent?---Yes.

And that would suggest, then, roughly about five per cent of small business lending that ANZ presently undertakes is to franchisees?---It would be to – yes.

15 It's pretty rough. I think you say each of the numbers is - - -?---It is pretty rough. There are some limitations with the data that we have for the non-panel franchisees, but I think indicatively that would be about right.

20 And, in terms of the distinction that's drawn at \$1 million, are you able to just explain to us why is that the marker of the level of facilities?---It's to do with the – two things: (1) the capital treatment for customers – the lending to customers under 1 million, which has to do with – versus over. And the way that we make credit decisions. So, for customers with lending up to 1 million, the credit decision is done under a retail credit decision approach. Over a million dollars, that's in our wholesale decision or judgmental credit decisioning approach.

25 Thank you. Now, I want to move, then, to starting to deal with some aspects of the particular case study that we're – the factual case study we're concerned with, which is, as I indicated before, a gelato shop?---Yes.

30 Let me just run through, first, very briefly the nature of what occurred. Ultimately, this lending resulted in a complaint being made by the customers to the Financial Ombudsman Service?---Yes, it did.

35 And the complaint was in relation to three business facilities that had been issued by ANZ in 2014?---Yes, it was.

And these facilities had been sought by the company, which was the borrower, for the purposes of purchasing and setting up a new gelato shop business?---Yes.

40 And the gelato shop was to be a franchisee?---The – the shop in question was to be a franchise within a franchise system, yes.

45 But that particular franchise wasn't one of ANZs accredited franchisors?---No, it wasn't.

And, therefore, the loan, when it was submitted and assessed, was submitted and assessed as a start-up loan in accordance with ANZ's small business credit requirements?---Yes, that's correct.

5 As distinct from being assessed under the standards that might have applied if it was an accredited franchisor?---If it was an accredited franchisor in the scenario of being a greenfield, it would also have been assessed as a start-up, but it would have been assessed as a start-up with reference to the accredited franchise credit criteria, as well, yes.

10 Thank you. And the application for business lending by this customer was assessed by ANZ in 2014?---Yes, it was.

And approved by ANZ in early October 2014?---Yes, that's correct.

15 The total amount of the three facilities that were provided was \$222,100?---Yes, that's correct.

And that was made up of, first, a business loan of \$150,000?---Yes.

20 Second, a business overdraft facility of \$34,000?---A temporary one, yes.

And, third, an indemnity guarantor facility of \$38,100?---Yes.

25 And that was – that last facility was to pay a rental bond required in relation to the shop premises?---It wasn't to pay the rental bond.

Sorry?---It was to provide a rental bond, yes.

30 To provide a guarantee as the rental bond?---Yes.

And there were three kinds of security that ANZ took to support the facilities? Perhaps if I just run through them?---I think there was actually four, but - - -

35 ANZ took a second registered mortgage over an investment property owned by one of the directors of the company?---Yes, it did.

And, next, a general security agreement over all of the present and future acquired property of the company?---Yes.

40 And, finally, personal guarantees and indemnities from each of the directors of the company?---Yes.

45 And was there another type of - - -?---No – sorry – I was counting both the directors' guarantees.

Each as a separate security?---Yes. Yes.

Now, in the complaint that was made to the Financial Ombudsman Service by the directors in 2016, they contended that ANZ should not have approved the facilities, because the company did not have the capacity to service them?---I think there was a number of components of the complaint. I don't recall at all. If we could go to the complaint I'm happy to - - -

Sorry. Why don't we do this by reference to particular paragraphs of your - - -?---Okay.

--- statement. If we bring up – if we go to page 41, which is ANZ.999.009.0105, paragraph 158?---Mmm.

ANZ was notified of a FOS complaint on 12 April 2016. So this is the complaint I want to - - -?---Yes.

--- talk about. This complaint was concerned with whether ANZ should have approved the facilities?---Yes. There were a number of elements of the complaint. I just wasn't sure which one you were referring to.

All right. But one of the elements was that the company didn't have the capacity to service – effectively, it was a complaint about whether the lending should have been made in the first place?---I'm actually – I'm sorry – I can't recall that that actually was. I recall some of the elements. If I could have a look at the exhibit and check.

Okay. If we go to tab 59. Now, I'm – can we go to a document that should have the doc ID ANZ.800.470.1637?---I'm sorry, which exhibit are we in?

There may be some difference in what the exhibit numbers are, but if we can bring up the document which is ANZ.800.470.1637?---Okay.

Are you able to read that, Ms Gibson? Would you prefer to try and find it in your hardcopy volume? If you have a look at about tab 59?---Yes, it's not 59, but - - -

Perhaps it's - - -?---It might be – I'm sure I can read this.

Try 60?---I know that the – the customer had – there were certain elements of the complaint with regards to the loan. I recall that he had concerns about whether or not we should have taken security. And he had – had concerns about whether or not he had been provided with appropriate advice. I just don't recall that he specifically said that the company was unable to service the loan. So I'm sorry. And I can't see that on here either.

I see. And if we go over the page to the dispute summary. I understand what you're saying. You're saying here the customer is making a complaint which is:

I was still given that loan which I could not afford to repay.

?---Yes.

Continuing:

5 *So I borrowed more money to make the repayments.*

?---Yes. So his complaint was he couldn't repay the loan, but not that we had – the company had not been able – that we shouldn't have lent, because the company couldn't afford to repay. His point was that he couldn't now afford to repay the loan.

10

All right. Now, the question of serviceability, that was one that was considered by FOS?---Yes, it was.

All right. And ANZ has a – had a position as to serviceability?---Yes, we did.

15

And if we just work through the process, FOS issued a recommendation in response to the complaint?---They did.

And that recommendation was in favour of the customer?---Yes, it was.

20

And ANZ – and is it fair to say one of the things, at least, that FOS concluded was that in approving the loan ANZ failed to exercise the care and skill of a diligent and prudent banker in assessing whether the company borrower had the ability to repay the loans?---That was part of their finding, I believe, yes.

25

And ANZ did not accept that recommendation?---No, we didn't agree with it.

And FOS proceeded to issue a formal determination in relation to the customer's complaint?---Yes, they did.

30

And the formal determination was also in favour of the customer?---Yes, it was.

And ANZ has complied with the formal determination?---Yes, we have.

35

But, notwithstanding that, it remains the position that from ANZs perspective it disagrees with the conclusions that were drawn by FOS?---Yes.

All right. And I want to have a look at some issues in relation to the determination as to the making of the loan to the company and ANZs perspective on the cashflow forecasts. Do you recall that one of the findings made by FOS in both the recommendation and determination was that ANZ had relied on projected cashflow forecasts that were overly optimistic?---Yes, that was their finding.

40

And, in reaching that conclusion, FOS found that, when compared with performance benchmarks for the gelato and ice cream industry that are published by the ATO, the cashflow forecasts relied on by ANZ in assessing the loan was overly optimistic?---That was their conclusion, yes.

45

And, therefore, unlikely to be achieved?---Well, they referred to the ATO benchmarks with respect to the cost of goods sold percentage - - -

5 THE COMMISSIONER: I'm sorry. Ms Gibson, do you mind keeping your voice up a bit more?---Sorry. Yes, I believe that in FOSs determination they concluded that the sales figures were overly optimistic with reference to the cost of goods sold percentage that is shown on the ATO website. That's not the only assumption that was in the cashflow forecast.

10 MR HODGE: Sorry. That's not the only assumption?---No, there are many assumptions in the cashflow forecast. The ATOs website references the 30 per cent cost of goods sold. It also makes a comment that that's the best indicator of turnover, and they have concluded, therefore, that the sales figures in the cashflow forecast, in the business plan, were overly optimistic, but they're basing that entirely
15 on the cost of goods sold percentage.

I understand. And just – I'm sorry. I think you said the ATO determined, but you mean FOS determined?---I'm sorry. ATOs website is talking about that, yes.

20 Yes?---FOS, also, said that the sales figures were overly optimistic with reference to that figure.

Yes. And the – we're going to come to this in due course, but the forecasts of cashflow, they were in a business plan document that was submitted with the loan application?---Yes, they were.
25

And ANZ contended before FOS that it was reasonable to rely on the information contained in the business plan?---I'm sorry, before FOS?

30 ANZ contended to FOS that it was reasonable to rely on the information contained in the business plan?---I'm sorry, I can't remember the exact wording of our letter back, but we disagreed - - -

Reasonable to?--- - - - that the – they were necessarily optimistic.
35

All right. Perhaps - - -?---So - - -

- - - if we forget for a moment about FOS and just the present - - -?---Okay.

40 - - - position of ANZ which you explain in your statement. ANZs position remains that it was reasonable to rely on the cashflow forecasts in the business plan?---Our position is that we looked at the serviceability relying on the cashflow. We also looked at the serviceability with a – a stressed version of the cashflows, and could also see serviceability. And, insomuch as we had done that, yes, we believed it was
45 reasonable.

All right. Well, perhaps we will come to the business plan in due course, and then we might be able to understand this a bit better. And what I would just like to make sure I have understood is if – if it had been unreasonable to rely on the cashflow forecasts in the business plan, would ANZ accept that it was in breach of its obligations under the Code of Banking Practice?---I think, if we believed that the serviceability had not been able to be demonstrated, then, yes, then we would not have met the obligations under the Code of Banking Practice.

Right. Now, you've exhibited and identified a number of ANZs policies in relation to applications for small business lending in 2014?---Yes, I have.

And those were the policies that applied when ANZ assessed and approved the loan to this company?---Yes.

And one of the sets of lending policies that applied in 2014 is a document called Credit Principles?---Yes.

I would like to take you to that. That's exhibit number 5. And it should be ANZ – there we go. It's up on the screen already. I want to take you through some parts of these documents, and then ask you at a general level how you would expect these policies to be applied. So you see the second credit principle is:

Only lend what the customer has the capacity and ability to repay.

?---Yes.

And if we go over the page, then, to the page .3293, you will see under that second credit principle:

Only lend what the customer has the capacity and ability to repay.

That there is a heading that is Background?---Yes.

And the first part of the background is that ANZ ought to understand:

...a customer's true debt servicing position and it is vital to assess payment ability.

?---Yes.

40

What's also explained is:

It is in neither the customer's nor ANZs best interests for customer to take on more debt than the customer can manage, based on the customer's environment

45

?---Yes.

Then you will see a heading Requirements?---Yes.

The then second bullet point is:

- 5 *Apply methodologies and tools which assist in determining a customer's capacity to repay, taking into account potential changes in external factors and/or circumstances.*

?---Yes.

10

And, if you come down to the seventh bullet point, you will see for business lending there's a series of points that are explained:

- 15 *Understand and assess the customer's business strategy, understand the drivers of the customer's cashflow, analyse historical financial data and assess projected cashflow as the primary repayment source, assess the customer's capacity to handle the various business risks by examining factors, such as the customer's management skills, experience, planning ability and management information systems, draw conclusions on the customer's capacity to repay based on the overall strength of underlying cashflows and the customer's ability to repay debt over the term.*
- 20

Is your view, having looked at this particular case, that ANZ complied with this part of the requirements in relation to this customer?---I think that the – what is set out here is at a high level for the group and it encompasses all of the business lending we do everywhere. There were some concerns I have with the way the application was handled, but overall, yes, I do.

25

Right. Would you be able to explain to us what were the concerns you had about the way the application was handled?---As I think I said in my statement, there are a number of instances where data was not input correctly into the system. And, you know, for my part, I think that it should have been. So - - -

30

Perhaps if we just walk through that. So one of the issues was that there was – there had been an earlier application that had been put in, a related application, which contained different financial information from the application that was ultimately relied upon for this loan?---There had been an earlier application by the individuals with relation to a different business, yes.

35

And I had understood one of the concerns that you had was that that difference hadn't been picked up in the – in the course of assessing the later – the final application?---There were differences between the application that was provided the first time round and the – and, I'm sorry, because there were six different applications here, I realise – and not using any of the names – the first - - -

40

45

It is challenging, yes?---The first two applications that were submitted with respect to a yoghurt business, there were differences between that application and the one that was later submitted with respect to the gelato business, yes.

- 5 All right. Perhaps if we do it by reference to paragraph 177 of your statement, which is ANZ.999.009.0108?---I'm sorry. What paragraph was that?

Paragraph 177?---Yes.

- 10 It might be easier if we just run through your specific concerns. The one you were referring to, which is the difference in figures, I think that's 177 subparagraph (c)?---Yes. Well, there were a number of times where there were differences in figures.

- 15 Yes?---So the – the one that I'm referring to in (c) is that we – you know, in the process of going through this file and preparing for this statement, we became aware of the fact that we had two application forms, one for the first business that the customers were seeking to purchase, and one for the second business that they were seeking to purchase. And those application forms both have the same date on them,
20 but they have different figures on them. And that was not apparent to either the banker or the assessor who were handling the loan that was eventually approved and drawn down by the customer, due to some challenges with our systems, and there not being a process requirement that they search for such an application. And there's no evidence that the customer advised them that there had been a prior one.

- 25 And has that process issue, in terms of not searching for earlier applications, been something that has been addressed?---Yes, it has. It has been addressed in two ways. We have a new origination system for small business loans that mean that the – both the bankers and the assessors can now see any prior applications that have been made
30 by the borrower. They are also able to search easily for prior applications from individuals – on individuals' names. And they are able to see the information for those prior applications on that system. And the assessors are also directed to give regard to any recent applications that may have been received by the borrower.

- 35 And then, in 177 subparagraph (b), you refer to a slightly different issue which is:

The lease expense and personal overdraft... were not considered in the capacity to service analyses conducted by the assessor.

- 40 ?---Yes.

- And do you regard that as a system issue that has now been addressed or, really, is just a one-off failing in terms of leaving something out in the consideration of serviceability?---I think it's a combination of a system failing and human error. The
45 system in – in place at the time relied on the banker to put the liability into the liability field. So even if a payment was put into the payment field on the – the financial statement of position, what the assessor was looking at in terms of

sensitising consumer liabilities relied on the liability to have been completed. So the fact that those liabilities hadn't been completed by the banker was overlooked by the assessor, and, therefore, they didn't take that into account in doing their assessment.

5 And then the last point, first in time, is that the statement of position, which I think – I'm not sure if you've got an unredacted version in front of you – I imagine you do. If you go to paragraph 177 of your statement?---Sorry. Did you want me to look at the statement of position?

10 I think if you – no, you don't have to look at the statement of position?---Okay.

Just if you look at the unredacted version, because, as you say - - -?---Yes. Sorry. It mentions the business. Yes. Okay.

15 - - - you will need to figure out which one it's referring to?---Yes.

And that, as I understand it, is the statement of position for the business that was ultimately funded?---Yes.

20 And so the statement of position for the business that was ultimately funded was lacking in detail, and there were no contemporaneous written records reflecting the information entered by the banker into the – is that small business lending system?---It is, yes.

25 All right. And that – do you regard that as a one-off issue or a process system failure issue?---That I would regard as an error by the banker. It was our expectation that the numbers on a statement of position in an application should be entered into the system to reflect the application. If there was some reason why those numbers had changed, they should have made notes to that effect on the system to indicate why,
30 you know, and, you know, ideally you should have actually had a statement recompleted that more closely reflected the actual position of what they were putting into the system.

35 And if we just return, then, to the cashflow forecast. As I understand it, insofar as ANZ relied upon the cashflow forecast in the business plan, you don't think there was any issue with that being done?---Well, there were some concerns that could have been raised with the customer about the cashflow forecast. I don't know if they were or weren't, because I haven't seen any notes in the files to suggest that they were or weren't discussed. The approach that the assessor took to the cashflow
40 forecast was to look at the serviceability, taking it at face-value. And then the assessor did what she termed a break-even analysis, where she, effectively, stressed the business, if you like, in terms of the cashflows, and dropped that profit figure to zero, and she reduced the owner's salary. And she still saw serviceability. And, therefore, on that basis she made a judgment that it was serviceable.

45 And just on that last – the stress test that you've referred to, the stress test is being able to service the loan on the basis that the profit of the business is zero, and the

owner is taking over – only half of the salary that had been projected in the – in the forecasts?---That’s after they’ve paid for the business expenses, yes.

5 Yes. And then could they still service the loan?---Yes, because the loan payments come out before you calculate the profit figure.

10 But the – the serviceability calculation that was done then wasn’t done by reference only to whatever was being earned by the business owner from the business, was it?---No. At that stage, she was looking at a combined serviceability picture for the business and both the directors.

15 Yes. So she was looking at serviceability based on this stress testing of the business, if you added in, also, the salary being earned by the other spouse who wasn’t working in the business?---He wasn’t the main person working in the business, but he was – he had indicated he would spend some time in the business. So he was a director of the business.

20 It wasn’t done by reference to the salary that he was going to be earning out of the business?---No.

It was done by reference to his salary from his other employment?---Yes. When we looked at the holistic picture, it was with reference to his salary and also his – well, his income and expenses outside of the business, yes.

25 All right. Was there testing done as to whether or not the business could service the loan based on just taking the income from the business?---There’s no notes in the file that explicitly call that out. I think the – the fact that the business was showing a healthy profit, I would take it that most of the bankers would not go to the effort of filling in a column just to say yes, the business can service when it clearly can
30 because it is profitable.

I understand?---They’ve moved straight on to looking at what would happen – what’s the holistic lending for the directors and the business.

35 And, in relation to this loan – can I just make sure we’re on the same page about this – the husband and wife that were going to be operating the business, they hadn’t previously worked in relation to frozen yoghurt or gelato or anything like that?---Not to my knowledge, no.

40 They were proposing to purchase this franchise as a new business?---Yes, they were.

It wasn’t an established franchise that they were going to take over?---No, it wasn’t.

45 And it wasn’t a franchise chain that was established in Australia?---No, it wasn’t.

And they were going through a broker in order to obtain the loan?---Yes, they were.

And the broker was dealing directly with the ANZ banker?---Yes.

And can we go to exhibit 30 of your statement, which is ANZ.800.534.0008?---I'm sorry. What was the document ID?

5

It was ANZ – actually, in this case it should start with ANZ.800.534.0041?---No, I ---

10 Are your exhibit numbers out by one?---My exhibits are all out by one. Yes. So just I will ---

It's possible my exhibits are out by one?---That's okay. No. No. I will assume yours are right. I will add one to anything you say. Yes.

15 Okay. Well, let's – can we just start with ANZ.800.534.0041?---Yes.

And have you got – just while that's coming up on the screen, have you got an unredacted version in front of you, Ms Gibson?---I do, yes.

20 Good. And so, while this is coming up, this is a chain of emails from what appears to be the broker to the relevant ANZ banker?---Yes, it is.

25 I will just wait for that to come up. All right. So this is a chain of emails. And, starting from the bottom, there is an email from the broker to the ANZ banker, which is an email in relation to the customer's application. And the last document is a business plan for which there's given a Dropbox link?---Yes, that's correct.

And that's sent on 8 August 2014?---Yes.

30 And then that seems to get forwarded, again, by the broker to the ANZ banker on 26 August 2014?---Yes.

And the banker responds to the broker on 26 August 2014 saying:

35 *We do not have access to sites like Dropbox, due to security limitations. Is it possible to have those documents sent as attachments.*

?---Yes.

40 And there's then an email back from the broker to the banker attaching the business plan.

And you will see it says:

45 *Attached, mate. My neck is on line here. I have lost couple of deals from the franchisor, as well. Please let me know. Already explained they had consultant ANZ manager and knew this is a deal.*

Did this – when you read this, did this seem like an unusual email to you for a communication between the broker and the banker?---It didn't strike me as overly unusual.

5 And then if we go to ANZ.800.534.0007. See then this is, again – you and I can see the unredacted parts. It appears that the – somebody from the franchisor is sending an email to the broker attaching the business plan with cashflow in reduced file size?---Yes.

10 And that's forwarded, in turn, by the broker to the ANZ Banker?---Yes.

And then that's the document that we then have, which is ANZ.800.534.0008?---Yes, that's correct.

15 And you've read through the business plan?---Yes, I have.

And, when you read through the business plan, did you have any concerns about the bank having lent money to a borrower to buy into this business, beyond the three points that you've noted already?---I had some questions that I would have asked
20 about the business plan, but they didn't immediately lead me to think that there was an issue having lent to the customer, no.

All right. And what were the types of customers that you would have wanted – I'm sorry – questions that you would have wanted to ask the customer?---I think, on
25 reading through the business plan, it's – it isn't, I think, uncommon for a franchisor to work with a franchisee on a business plan, because they necessarily need to provide information about the franchise. The language in the business plan does strike me in a few places as pretty generic to the franchise system. And in other places it's quite specific to the customers and their particular circumstances. So I
30 would have expected that the banker would have wanted to check that the customers had been involved in the business plan development. The – if I think about the sorts of things that we suggest to customers that they think about having in their business plan, there were a number of things in their – in the business plan that covered that off. They had looked at the – the market for ice-cream stores, they had looked at the
35 demographics for the area where they were proposing to open the shop. They had a pretty detailed cashflow forecast in there. They had considered seasonality in the way they put those figures together. The questions in my mind were that the revenue figure, while detailed, didn't make it clear what assumptions that they had made in putting those figures together. I think the assumption a reader would take is that that
40 had been heavily informed by the franchisor. And I would have wanted to understand what it was based on.

And do you think – do you have a view as to whether it's the responsibility of a
45 banker to raise these types of issues with the customer?---It's certainly our expectation that when a banker is going to submit a loan for a start-up loan, they need to get a business plan, they need to get a cashflow forecast and they need to form an opinion as to the reasonableness of that. And I think it would be difficult to

do that without having a conversation with the customer about the – the figures in there.

5 Perhaps if we have a look at some elements of the business plan. If we go over to page 3 of the business plan which is ANZ.800.534.0010. And the business plan describes the franchise as a multi award winning gelato brand. Do you see that?---Yes, I do.

10 And says:

After the successful business in New Zealand, the franchise has now landed in Australia to offer franchises.

15 ?---Yes.

And it's apparent, isn't it, that this franchise has not to date operated in Australia?---I think that's clear, yes.

20 And if you look down the page to Capital Requirements, it explains the purpose is:

To open the franchise store.

?---Yes.

25 And – it may be there's some over-redaction going on here, Commissioner, which is frustrating, but I will work through it as best I can. There's a figure that's given for total set-up cost?---Okay. That's not redacted on mine.

30 It's not redacted on yours. In any event, so there's a total set-up cost of \$340,000?---Yes, that's correct.

And 50 per cent of that is to be contributed by the owners and the balance by debt funding – I'm sorry – by equity – no, debt funding?---Yes.

35 And there's then a description of the personal characteristics of the borrowers?---Yes.

And the director is said to have experience of running a retail store in Australia and overseas?---Yes.

40 But not a retail store for this franchise?---No.

45 And, indeed, was it a retail store in relation to food at all?---It's not clear to me. There are later notes in the file that have reference to her having worked in a food store. I'm not sure if I can name it or not. But it – it wasn't an ice-cream store, but it was a food store in a different franchise system.

All right. And then if we go over the page to page 4 of the business plan. Again, the franchise is described as:

5 *A new emerging gelato brand born in New Zealand and now arrived in
Australia to offer retail franchises.*

10 And, if we then go over the page to page 5 of 33, it explains that the franchise has four types of models, and the particular model that's going to be used in this case is a kiosk store in Westfield Shopping Centre?---Yes.

15 And, if we then go over the page to the page .0019. Sorry, I should actually go back a page, which is .0018. I think you spoke before about the idea of – did you describe it as generic language or general language?---I – I think that may have been the phrase I used, yes.

15 And is this the type of thing you're talking about, where it has a mission, which is that:

20 *The franchise will be a great place to eat, combining an intriguing atmosphere
with excellent interesting food.*

?---I think that whole paragraph sounds like it could have been put into any of the business plans for the franchise system, yes.

25 Yes. Or, indeed, any franchise system to do with food?---Possibly, yes.

And then if you come over the page to .0019. And we have the Objective. And, again, this is very generic language at the beginning:

30 *The purpose of the business is because of our passion about food industry,
vegetarian product, to produce the missing ingredients, that is to say, quality
and services, which are rare in majority of the stores these days.*

35 And that's the type of language you're talking about?---Yes. It may well be what the owners believe, but it's not clear that it's specific to this store, no.

No. And, as we know, the plan was sent by the franchisor?---Yes.

40 And it's unclear whether the franchisees had any involvement in preparing it?---I think there are a few references to the – the customers that suggest that they had had a conversation at a minimum with the franchisor, yes, but I think it's - - -

Yes, but there's nothing to suggest they prepared it?---From scratch, certainly not.

45 Well, indeed, other than – there's information about them, but there's nothing to actually suggest that they were involved in the preparation. They didn't put pen to paper, or type on a computer, or anything like that, to prepare the document?---I

can't tell. Other than that the franchisor sent it to the broker, which we know, I can't say who prepared it.

5 And then there's set out the store's objectives for the first three years of operation, which are – I'm not sure whether they're redacted on your version, but, in any event, very general. Do you agree with that?---Some of them are specific, because they speak to the assumptions that were put into the cash flow forecast, and some of them are general.

10 I see. And then, if you go over the page to page .0020, it explains that the store is to be developed as a standalone fully fitted out gelato production and sales facility. But it's apparent, isn't it, from the redacted part that you and I can see but others can't, that it's going to be a kiosk?---Yes.

15 In the middle of a walkway at a Westfield Shopping Centre?---Yes. I think the picture – I'm – I'm looking at the picture that's shown and it looks like a kiosk to me, so - - -

20 Yes. But you also – if you've got the unredacted version, you can see - - -?---Yes, where it was going to be sited, yes.

All right. And then, if we come over to page .0022, this is the start-up summary that explains where the \$340,000 comes from?---Mmm.

25 And it explains that the store has been identified and will open in between October and November 2014, notwithstanding that that's redacted. That's not subject to a non-publication direction?---Yes.

30 And then, if we go to the page .0025. This is the – I think you referred to some consideration of the market before?---My recollection – I would have to re-find it – was that there had been reference to an IBISWorld report on the ice cream, and that there was discussion about this area of Westfield and the growth in the demographics.

35 All right. Can I just point out a few things to you and then ask for how you think an ANZ Banker ought to have reacted. You see there's a heading Children, Students and Families and it says:

40 *The perfect place for children and families. Kids and parents will enjoy the products, while families will come for an accommodative menu and friendly service.*

See that?---I do.

45 And then you see:

Happy couples. The store will have an intimate, romantic, sophisticated atmosphere that encourages people to bring dates and to have couples arrive.

?---Yes.

5

It's a Westfield kiosk?---I know.

I just – I suppose the starting point is do you expect your ANZ bankers to read the business plan?---Yes, I do.

10

And do you expect that they would raise these types of issues, which is – it's – this is entirely generic document in large part unrelated to what is actually going on?---Yes, I would.

15

And if they have – in this case, there's no record of that having been done?---No, there's not.

20

And do you think, having not done that, that raises a question about whether or not they have acted as a diligent and prudent banker?---There's no notes as to whether the conversation occurred, but I don't know whether the conversation occurred or not.

25

One of the issues I'm interested in exploring with you is the level of responsibility as between the borrower and the banker, because we can look at this and see that this is inconsistent within the own – within the document itself as to what is going to happen. Ought that be a responsibility, in your view, that lies only on the borrower to recognise this inconsistency or is it also a responsibility that is shared with the banker?---I think it is shared. And I think that because it is – it is important that the banker forms an opinion as to the reasonableness of the cash flow forecasts. And whether the customers have understood the business that they're getting into is going to – and, you know, who the target market are, is part of that. I suppose, the challenge is that we are not – I'm not clear what conversation happened with the banker. And I'm not – I'm not of the opinion that in every case the business plan would need to be taken back and edited to reflect and updated. If the banker formed the opinion that the cash – you know, that they did understand and they hadn't updated the language, then they could proceed. But I agree with you that the bank needs to form their own opinion.

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35

40

And, on your review of this business plan, what is the opinion that you would have expected the bank to form?---I think that the bank – the banker should have had a conversation with the customers to make sure that they understood the business. There are notes at the time indicating that he had had conversations, but not what those conversations should have been about. And I think, as I said before, many of the things that we would look for in a business plan are in this document. And if the banker had formed the opinion that the customers had had sufficient involvement in it to understand it, then I do think it's a reasonable – it's reasonable to accept it.

45

Is it something where one of the risks – I withdraw that and put it a different way. Looking at this document, and bearing in mind the fact that the borrowers have not previously worked in relation to this franchise, and have not – and one of them is not going to work full-time in the business, and neither of them appear to have owned a
5 business themselves before – you agree with those things, that that’s - - -?---Not a business of this scale, no. The – one of the owners had run a small business online from home, but I don’t think it was on the scale of this, so - - -

10 Nothing like – it wasn’t a retail operation or anything like that?---No.

On the face of this document, there appears to be a risk that the borrower is being taken advantage of by the franchisor and the broker. Do you agree with that?---I’m not – I’m not sure that that is exactly where my mind would jump. I think it – there is always a risk that people who are entering into a small business do so without as
15 full an understanding of the business, you know, as they might have. I’m – I’m aware that the customer has alleged that that was the case, but I don’t think that it’s immediately obvious from the document that that is what’s going on.

All right. And then, if you come over the page to .0033, you see this is a list of
20 assumptions, and then some indicative numbers around what the – how the business’ cash flow is calculated?---Yes.

And then over the page, at .0034, there’s then projected cash flows and profit and loss forecasts based on the existing store sales?---Yes.
25

Now, we know there were no existing stores in Australia?---Yes.

So, at best, this could be projections based on cash flows in stores in other countries?---There’s a number of ways it could have been done. It could have been a
30 cash flow from another country. It could have been a model where they looked at the volume of ice creams and other products sold in the New Zealand stores and reset those price points to the Australian market. We don’t know, because the assumptions are not spelt out.

35 And would you expect those assumptions to be spelt out for the bank?---I think in – ideally, yes, they would have been.

All right. Do you think there’s a problem with ANZ accepting the forecasts without those assumptions being spelt out?---I think it’s ideal that they are. I think for the
40 bank to make it something that’s a mandatory requirement is also challenging.

In – why is that?---Well, because of the range of different businesses that apply to ANZ. I think once you become prescriptive about exactly what has to be in there, you – you know, you are making it challenging for people who are starting
45 businesses that don’t have that data to meet your requirements. And you run the risk that, if you have a very prescriptive, mandatory requirement, that people who can’t meet that, then can’t access lending or may just make the numbers up.

May make up the detail – may make up - - -?---Yes.

- - - the detailed assumptions?---Yes.

5 What I'm wondering about, though, is that's the risk with these numbers, isn't it?---That they don't – we can't test the assumptions, yes, that's a risk.

And that they've just been, at least to some extent, or perhaps entirely, made up. It's impossible to know?---It's not possible to know how they've been arrived at, no.

10

And whether there's – you make the point – you can think of at least two different ways that they might have forecast cash flows based on existing store sales from overseas?---Yes.

15 But what those stores are, what countries – presumably they're in New Zealand, but how it's gone about – how any of this is gone about is not apparent on the face of the document?---No.

20 And I am – what I'm trying to tease out is your view, I think – and I don't want to be unfair to you – is it's not ideal that the banker accepted this without teasing those things out?---I'm not sure if the banker did or didn't. There's nothing in the notes of the file to suggest that he had that conversation. There's nothing he has put in the notes to the file for the assessor to look at to provide them with any indication that he has had that conversation. So it – it's fair to assume that perhaps it didn't happen. I just don't know.

25

Well, I think the – you've spoken to the banker, haven't you?---Yes.

30 And the banker has told you he didn't speak to the franchisor?---He did tell me that, yes.

And did you ask the banker whether he did anything to test the basis of these projected cash flow forecasts?---Actually, I don't think I did, no.

35 Okay. But, in any event, he didn't speak to the – I'm sorry, I may have – did I say he didn't speak to the franchisor? That's who he didn't speak to?---Yes. Yes.

40 Yes. Without speaking to the franchisor, it's difficult to see how he could have satisfied himself as to the basis of these numbers?---Well, again, I don't – I don't know what conversations did or didn't happen, but it would not have been unreasonable for him to ask the customer and the customer to have provided that information.

45 But he didn't record it?---He didn't record it, no.

And it wasn't provided to the credit assessor?---No, it was not.

And so, therefore, both the credit assessor and the banker proceeded without the information?---Yes.

5 And, again, to return to the question I've asked a few times, is that a failure to
exercise diligence and prudence, in your view, of a reasonable banker?---No, I don't
think it is, because, again, we ask them to form a view of the reasonableness. And
these revenue figures don't seem to – I mean, I – I'm not someone who looks at these
every day of the week, like assessors do. I think if the assessor had looked at these
10 and had felt that they were wildly out of – out of kilter with what they were seeing,
you know, every day of the week in looking at – at business applications, they would
have asked questions.

THE COMMISSIONER: Well, can I just test that a moment. Just back of the
15 envelope numbers. Take the July number, say 45,000 monthly sales. Assume seven-
day week operation. How many units at \$5 a unit are they selling each day? It's a
lot of units, isn't it?---So I did look at that, Commissioner. I used 60 hours – I think
63 hours, based on the roster. I actually went and found a blog about ice-cream
prices. So it's more like \$7 an ice-cream. And it came out, based on them doing 85
per cent of their revenue over the counter – and I was using about 55,000, which was
20 the average, it was about, I think, 23 ice-creams an hour that they would have to sell.

In July?---Sorry – no, that was – 55 was the average for the whole year. So it would
be less in July, I agree.

25 MR HODGE: Can I – unfortunately, Ms Gibson, we're going to need to break in a
moment. Can I just ask you - - -?---Yes.

- - - one other thing. I'm sorry, Commissioner, did you want to ask any more
questions about that?

30 THE COMMISSIONER: No. No.

MR HODGE: Just if you go to page .0038. So this is the hypothetical budget that's
35 arrived at for the profit and loss projections. And you see the bottom line is:

Return to owner.

Which is said to be wages and profit?---Yes.

40 See that? And you see, in order to arrive at that, that is calculated by adding back the
GST of almost \$30,000?---Yes.

Can you think of any way in which GST would be added back in order to arrive at
the return to the owner?---No.

45 And you see, then, the net profit before tax is said to be \$175,000?---Yes.

And then – that’s the net profit of the company, as we read it, before tax?---Yes.

And after adding back GST?---I think so. I have to say, I have spent more time on an earlier page, which were the figures that we actually used in the assessment. I don’t
5 believe these figures were used anywhere in ANZs assessment of the loan.

In ANZs assessment. I understand. And what I’m interested in is this, then, is suggesting to the owner that the return to the owner will be 200 – almost \$226,000 based on the owner’s wages, plus the before-tax profit of the company, which
10 includes adding back \$30,000 of GST?---Yes. It doesn’t seem an accurate number.

And – it just seems impossible, doesn’t it? It just doesn’t make any sense whatsoever?---As I said, I’m sorry, I haven’t looked – spent a lot of time on this. I –
15 on the face of looking at it, it doesn’t seem like a correct number.

Is the number that ANZ relied upon, if you go back to page .0035, the net profit before tax shown down in the bottom corner of 140 – almost \$142,000?---Yes, that
is.

All right. And, notwithstanding that that’s the number that ANZ was ultimately going to rely upon, would you expect the banker to be raising issues with the putative
20 borrower about this figure of \$226,000 and where it comes from and what the borrower’s expectations are?---If the banker had read that detail, then yes, I think it would be reasonable for them to ask a question about it.

Because – and I want to be fair to you – the counterview might be that’s not the
25 banker’s job. The banker’s job is to assess the loan and it’s the borrower’s job to make a decision as to whether the borrower wants to borrow the money and start a business. And if the borrower makes a hopeless bet, that’s the risk for the
30 borrower?---I think in – in a case where the bank is lending money to them, it’s a risk for the bank, as well. But I agree with you that the decision to invest in a small business is the decision of the small business owner.

Commissioner, would it be possible to - - -
35

THE COMMISSIONER: Yes, we have got a witness who has taken a day off work and has got to be back at work tomorrow.

MR HODGE: Yes.
40

THE COMMISSIONER: Ms Gibson, I’m sorry, we’re going to have to ask you to come back tomorrow - - -?---Okay.

- - - at 0945?---That’s fine. I will be here.
45

<THE WITNESS WITHDREW

[3.44 pm]

THE COMMISSIONER: Thank you. Now, Mr Hodge, are we changing horses at the bar table, etcetera?

MR HODGE: We are, Commissioner.

5

THE COMMISSIONER: Yes. Righto. Well, I will come back – I will give you two minutes to sort yourselves out.

MR HODGE: Thank you.

10

ADJOURNED

[3.44 pm]

15 **RESUMED**

[3.47 pm]

THE COMMISSIONER: Yes, Mr Hodge.

20 MR HODGE: Commissioner, the next witness is Ms Marion Messih.

THE COMMISSIONER: Yes.

25 **<MARION ANGELIKA MESSIH, SWORN**

[3.47 pm]

<EXAMINATION-IN-CHIEF BY MR HODGE

30

THE COMMISSIONER: Thank you very much. Do sit down. Yes, Mr Hodge.

MR HODGE: Thank you, Commissioner.

35 Ms Messih, could you – I am sorry – your full name is Marion – is it Angelika Messih?---It's Messih. Pronounced Messih.

Messih. I am sorry?---Without the A. Thank you.

40 And, Ms Messih, you've provided your address to the Royal Commission?---Yes, I did.

And what do you do for work?---I work in a bakery at the moment.

45 Okay. And you received a summons to attend and give evidence before the Royal Commission?---Yes, I did.

Do you have that summons there with you?---Yes, I do.

I tender that summons, Commissioner.

5 THE COMMISSIONER: Will be exhibit 3.16 – will be the summons to Ms Messih.

EXHIBIT #3.16 SUMMONS TO MS MESSIH

10

THE COMMISSIONER: Yes.

MR HODGE: Thank you.

15 And you've also prepared a statement for the Royal Commission?---Yes, I have.

And it's dated 14 May 2018?---Correct.

And you've read through your statement?---Yes, I have.

20

And are the contents true and correct, to the best of your knowledge?---Yes, they are.

Commissioner, I tender that statement.

25 THE COMMISSIONER: Exhibit 3.17, the statement of Ms Messih.

EXHIBIT #3.17 STATEMENT OF MS MESSIH DATED 14/05/2018

30

MR HODGE: Now, in 2012, you were working as an office manager and bookkeeper at a local waste management company - - -?---Correct.

35 - - - in Victoria. And before that, you had worked in a similar administrative role in a school?---Yes.

And – I am sorry – you might just need to speak up. Just because of the – we've had a few chair problems, so - - -?---Okay.

40 You might just need to speak up so that we can hear you. And, as at 2012, you owned your own home?---Correct.

And you also owned a residential investment property that you rented out?---Yes, in Maribyrnong.

45

And did you have any mortgages over either of those properties?---On both.

Okay. And which bank did you have those mortgages with?---Commonwealth Bank.

Okay. And before 2012 you separated from your husband?---Correct.

5 And you had received the properties as part of the property settlement?---Correct.

Now, I want to ask you about some events that took place in 2012 through until
about 2014. And they involve, as you know, your brother and your then sister-in-
law. I'm not going to use their names. They're subject to a non-publication
10 direction. So I'm just going to refer to them as your brother and your sister-in-
law?---Fair enough.

Now, in 2012, you started looking into purchasing a business to run with your sister-
in-law?---Yes.

15 And you had known your sister-in-law for a long time before then?---Probably about
20 years before that.

And your brother was also interested in being part of the business?---Yes, he was.

20 But - - -?---More as a silent – he would continue to work where he was working, but
he would also be part of the business, as well.

It would mainly be you and your sister-in-law that would run the business?---Yes.

25 And why did you want to run your own business?---We – well, personally, I wanted
to have a change in life, because I had always been doing office work and
bookkeeping, a change of direction, hopefully run a business, earn some money,
retire early.

30 And were you particularly interested in looking at buying a food franchise
business?---Food, yes. Not – yes, probably food more than anything else. Yes.

All right. And were you interested, in particular, in a franchise?---We didn't start off
35 thinking about getting a franchise. It was just, as it came up and what came up, we
ended up going for a franchise.

And was your sister-in-law working at the time?---Yes, she was.

40 And what was her job?---She was also an office manager.

All right. And your brother was self-employed?---Yes.

And what was his job?---Mechanic.

45 Mechanic, did you say?---Yes.

And were you all planning on working in the new business?---Initially, we decided maybe one of us would work in there and the other would keep a full-time job. But when we actually inquired further and actually had to do training in Sydney for a month, we both decided that we wanted to both do the training and that keeping
5 another job probably wasn't going to be feasible. And we also thought that, if both of us were at the business full-time, we might have a better chance of making a go of it quickly.

And did any of you have any experience in running your own business?---No, except
10 my brother, because he ran his own.

As a mechanic?---Yes, as a mechanic. Yes.

And did you have any experience working in cafés?---No.
15

What about your sister-in-law – or former sister-in-law?---She didn't have work experience in a café, but her parents did run a fish and chip shop when she was younger which she did work in.

So then in 2012 you started looking into a few different food franchises?---We
20 started off looking at Subway, we looked at Gloria Jeans and then we came across Pie Face.

All right. And what kind of business was Pie Face?---Pie Face was coffee, pies,
25 sausage rolls and pastries, basically.

And you and your sister-in-law decided you were interested in trying to buy a Pie Face franchise?---Well, we decided that we would, yes.

All right. And why were you interested in Pie Face?---There was a lot of them in
30 Sydney and there wasn't that many in Melbourne. And we saw that a lot of people – a lot of people actually like pies and coffees, so we thought we might give it a go. It appealed to us in that sense. And, because there wasn't that many in Melbourne, we thought it might be feasible.

All right. And you found a store to buy. Is that right?---Well, Pie Face
35 representatives actually found and told us about the store that was available.

Right. Did you get in contact with Pie Face to look at finding a store?---When we
40 met with them, they – it was their responsibility to let you know what was available to purchase.

All right. And they let you know that there was an existing Pie Face - - -?---Yes.

- - - that was for sale?---In Werribee Plaza.
45

And, after you spoke to the Pie Face representative, did you speak to the existing owner of the store?---No.

You only dealt with the Pie Face - - -?---Correct.

5

- - - franchisor. And you incorporated a company for the purpose of purchasing and running the store?---Yes, we did.

And you had an accountant that helped with the – incorporating the company?---Yes.

10

And was the accountant your accountant?---No, it was my ex business partner's accountant.

Your sister-in-law's accountant?---Sister-in-law's.

15

All right. And can you recall what the purchase price was for the Pie Face store?---330.

All right. And could you – you, obviously, needed to take out a loan in order to buy that?---Yes, we did.

20

And you applied, as we know, ultimately, to Westpac for a loan. Why did you apply to Westpac?---When we were negotiating with Pie Face – well, talking to them, they said if you do get to purchase one of our businesses, you need to get loans with Westpac, because they were accredited with them. So - - -

25

Pie Face was accredited with Westpac?---Yes.

And had you ever previously banked with Westpac?---No.

30

Do you know whether your brother and sister-in-law had banked with Westpac?---No. I think maybe they did, but I wasn't sure about that.

All right. And you applied for a loan of about 300 – or a bit more than \$360,000?---Yes.

35

And that was, I think you have already pointed out, the purchase price of about \$330,000. What was the extra amount for?---It was for a bank guarantee, and also a business overdraft. I think the business overdraft was 20,000. The bank guarantee was 19, but then they increased it to, I think, 24, just before - - -

40

Right. I want to just bring up a document that's not exhibited to your statement, which is WBC.404.001.0053. And this should be, if we just turn over the page – this is the loan application form that was – that you completed?---Yes.

45

And if we just go over the page, again. Can you just tell us whose handwriting is this?---That's my sister-in-law's handwriting.

Okay. But did you and she complete this application?---Yes, we did.

You completed it together?---Yes, we did.

5 All right?---She has got neater handwriting than me. That's why she completed it.

All right. And the amount that's applied for there, you can seem, is – I hope it's clear enough – \$362,500?---Yes.

10 All right. Commissioner, can I indicate – I can tender that document now, but it's part of an exhibit to – or is an exhibit to Mr Welsh – another of Mr Welsh's statements. And he's going to appear tomorrow. So I am content to just deal with it then.

15 THE COMMISSIONER: Unless there's some pressing need to tender it now, leave it.

MR HODGE: No. Thank you. That's why we left it out of Ms - - -

20 THE COMMISSIONER: Yes.

MR HODGE: - - - Messih's statement. All right. And if we go to the page .0055. Good, we've got that up. And you see there's something there that says:

25 *See the business plan.*

Can you see that, about three-quarters of the way down the page, Ms Messih? It's in your sister-in-law's handwriting?---Yes.

30 Can you recall whether you prepared a business plan?---I can't recall doing one.

Okay?---It doesn't mean we didn't, but I can't recall doing it.

35 Okay. And then if we go to page .0057. So this explains the purpose of the loan is to purchase the Pie Face store?---Yes.

And then if we go to page .0066. You provided various information, and your sister-in-law did, about your assets and liabilities?---Correct.

40 All right. And you had to provide Westpac with some other documents to support your application?---Yes.

45 And can you remember what kinds of documents?---I think it was the rental agreement for my property, probably a tax lodgement, the most recent one. Other than that, I can't remember.

All right. And did you say – did you – a profit and loss statement or something like that, or a projected profit and loss? Not that you can recall?---No, I can't remember

5 Okay?--- - - - producing that.

And then, if we then talk about what just happened with your loans, what happened with the loans in relation to your home and investment property?---Recently?

10 No. No. At the time when you were borrowing the money from Westpac for the business?---I had to- I had to move over to Westpac to get the loans, and they took – I had to be guarantor for my investment property, as part of the business loan.

15 And why did you need to move your loans over to Westpac?---As a requirement with Pie Face, they said we had to bank with Westpac to get the business loan.

Okay. And that's not something you recall Westpac having said to you?---No.

20 All right. And then you – so you moved the home loans over, and you had – Westpac had mortgages registered over your home loans?---Yes.

And you also gave - - -?---Over the investment property.

25 Over the investment property?---Yes.

And you also gave a guarantee of the borrowing?---Yes.

30 And, before the loan was approved, you had to pay a deposit on the sale contract. Do you recall that?---I think that was actually part of the – in the loan for the – yes.

All right?---Part of the loan. We never used our own funds to do that.

Right. It all came from - - -?---Yes.

35 From Westpac?---From the borrowings, yes.

40 All right. And do you recall you got – I will just list out a few things – a business loan, an overdraft, the bank undertaking for the rental deposit, and a business credit card?---Yes.

And what security did you have to give in support of the loans?---Security was part of my property at – my investment property.

45 Right?---That was the only security.

And before - - -?---That was my security.

I'm sorry. Say that again?---That was my security.

Yes. And your sister-in-law and your brother also gave some security?---Yes, they had their own security on their house.

5

And, before you started the business, when you were looking into buying it, did you have a view as to the profitability of the business?---We had hoped that it would make success and we would earn a lot of money, but – yes.

10 But you looked at some figures that had been provided by Pie Face to you?---Yes.

And you have – your sister-in-law had an accountant that was helping you?---Yes.

15 And what did the accountant say to you about it?---He said the business, looking at the figures, was not – were not profitable at the moment, but with hard work, if you can increase sales, it could make a profit.

All right?---Within a projected time of maybe up to three years, depending on how you increase the sales.

20

And did you have a view at the time as to what sort of income you thought you and your sister-in-law would derive to begin with from the business?---Well, we had hoped we would get about 50,000 each, but that wasn't possible.

25 Once you started operating the business?---Yes. Yes.

All right. And - - -?---We knew in the beginning that we weren't going to get much of a salary.

30 Now, once you got the loan, you went ahead and, as you said, you purchased the Pie Face - - -?---Yes.

35 - - - store. And did the store start trading straightaway after you purchased it?---When we finished our training and actually took over the business from that day, yes, we started trading straight away.

40 All right. And was there training full-time in order to start?---Yes. Training was compulsory for one month in Sydney. For one – or the franchisor – was compulsory for one person. Because we're a partnership. It actually cost \$10,000 for the training, but we negotiated that we would both do the training for that price, which Pie Face agreed to.

And I assume then you had resigned from your existing - - -?---Yes.

45 - - - employment in order to start the training?---Yes.

And you started trading in about August of 2012?---Yes.

And how did the business go?---If we earned \$500 in a week, it was a miracle.

5 That was at the beginning?---Yes. It was pretty woeful, to be quite honest. We were working 14 hours a day running a business, and sales were not even \$500. It was just ludicrous.

10 And - - -?---We sort of realised that the figures that the previous owner had presented were slightly exaggerated, because he had actually run the business down. So by the time we took it over, there – the clientele just wasn't there.

15 And, over the course of the first 12 months that you owned the business, what happened to the performance?---Well, we set ourselves goals and little – little achievements to aim to. Like, \$500 a week just isn't going to cut it, because we also had my daughter working there, as well, as manager, if we weren't there. So we set ourselves little goals to increase the – the sales. And if we got it to \$600 this week, we would go out for dinner or something like that. So within the – after the first year, we increased the sales to over 1000 to \$1200 a week, which we were pretty proud of.

20 But that was by about, what, mid-2013?---Yes. Yes.

25 And what happened after that?---Well, we continued to build up the business. We got a really good clientele. We worked hard with – because it was in Werribee Plaza, we worked hard with getting a lot of the retailers to come to the store, especially in the morning, coffees and things like that, which really increased the sales, as well. It was running well until Werribee Plaza started to have major renovations - - -

30 And?--- - - - through the plaza.

35 And what happened once the major renovations started?---They closed all the carparks, bar one. And it was a month before Christmas, which is the worst time of the year to do that, because you're waiting for Christmas sales and increase people in the shopping centre to make your business viable and actually make some money, because that's actually the busiest time of the year, between late November and January. But people avoided Werribee plaza with a passion. There's no parking. You can't get in and out of the place. Why shop there? People went elsewhere, High Point West, Woodland, Melton, to do their shopping.

40 And - - -?---So sales decreased again. We had to still pay the same amount of rent to the owners of the plaza. There was no discount given. And it was in their agreement that they can do renovations whenever they – they want to, and you 've just got to put up with it.

45 And what did you do with the running of the business to try to accommodate that, if anything?---Well, we either sank or swam. So we found out who the contractors were that were actually doing the construction of the plaza, the reconstruction. It

was two major companies. So we contacted the – the head people of that company, had a meeting, and – our normal trading hours, we would be there from 7 o'clock till whenever the plaza shuts, whether it be 5.30 on a weekday or Saturday or Sunday. We negotiated with the head of the contracting companies that we would start at 5
5 o'clock in the morning. And we also negotiated that with the plaza, as well. We would start at 5 o'clock in the morning, so that we would be ready for the contractors to come in to get breakfast at 6 o'clock in the morning before they actually start work.

10 And how did that work?---That helped a great deal. If we didn't do that, we would have lost the business a lot earlier than that, because it actually – it stabilised the – our income. It wasn't as good as it had been, but at least we helped it to have some income. Otherwise, we – we wouldn't have any.

15 When you say it wasn't as good as it had been - - -?---Sales decreased - - -

Yes but had your income ever got up to the point where you had achieved the goal that you and your sister-in-law had - - -?---No.

20 - - - of having \$50,000 each - - -?---No.

- - - out of the business?---No.

25 And - - -?---If it kept on being steady and, without the construction work, the accountant – after the first year we submitted profit and loss and he said, look, the business is getting better. You are still not going – it's still not profitable at the moment, but if you keep going as you are, within the next few years, you will make headways. And it could be very profitable business.

30 And in early 2014 you sought a payment plan from Westpac?---Yes.

35 And what was the reason for that?---Because the sales had decreased so much, we couldn't keep up the payments with – we had to contact even centre management to try to – I don't know – make littler payments weekly, rather than monthly, just to help cash flow and get the bills paid, because we were struggling.

And what was Westpac's response to the request for a payment plan?---They were fine to start with, yes.

40 And they let you change the payments?---Yes. We paid weekly, yes.

Rather than monthly?---Yes.

45 And did that help?---For a short term. But the – the impact the construction had on the business – and not just our business; it was all the businesses within the plaza – was just – it was very hard to come back from that. So we fell behind with a lot of
- - -

And you fell behind with your payment plan to Westpac?---Yes. Yes.

And what happened then from Westpac?---Then we – I think we were issued with a default notice.

5

Was it just one?---I think there was more than one, but I can't remember how many.

All right. And did you keep – obviously, you're no longer running the store now?---No.

10

When did you shut the store down?---I think it was either November two thousand and – was it '15 or '14? I can't remember the exact date.

Was it - - -?---Pie Face actually went into voluntary receivership. So we had a meeting with all the other franchisees in Victoria. And there was an option that where – we could actually get out of the lease with the plaza if we acted within a week and a half. We had, like, till the end of November to actually be right out of the store, otherwise we would be up for the lease with the plaza, as well, for the next three years, which we couldn't afford.

20

All right. And so you shut the shop?---Yes. We shut the shop. We took what we can over the weekend, coffee machine, ovens, whatever we purchased. But the actual fit-out of the shop, which was actually ours, which we owned, we had to leave there, because we were not allowed to – because it was a 25 square metre shop just in the food court. So you had barriers – like, benches around. And that was actually fixed into the tile section of the food court. So if we wanted to take all that with us, we would have to have it fixed by the Monday morning trade. It was not going to happen.

25

All right. So you shut the shop and then at some point you applied for hardship assistance - - -?---Yes.

30

- - - to Westpac?---Yes.

And was that because you couldn't make the monthly repayments?---Yes.

35

And - - -?---Because I wasn't working at the time, neither was - - -

Your sister-in-law?---Yes.

40

And Westpac approved the hardship application?---Yes.

And they suspended your repayments for a period of time?---Yes.

And, eventually, that suspension came to an end?---Yes.

45

And had you found a job by then?---I think I was working part-time, but I can't recall exactly when.

And you had to start trying to make repayments again?---Yes, I did.

5

And – but you couldn't do it?---No.

And why was that?---I wasn't working – or was I – I can't remember. If I had a job, it was only part-time, anyway. And, because I had had the business loan, I had a credit card with Commonwealth Bank that I was paying off, and also another Westpac credit card that I was paying off, expenses that were put on there from the business when we went training in Sydney. So it was just too much. I wasn't – I had the income from my rental property, but that didn't cover all the expenses that I had.

10
15 And so do you recall that you made a complaint to the Financial Ombudsman Service?---Yes, I did.

And do you recall what your complaint was?---The complaint was – we actually met with a few of the franchisees from Melbourne. We got a number for somebody from Franchwise that would actually represent us on our behalf to make a claim for FOS. And it was on the basis that we shouldn't have been given the loan to start with, to
20
- - -

That is, Westpac shouldn't have given you the loan?---Yes.

25

And what did the Financial Ombudsman Service find?---They found in our favour, that they shouldn't have. And we were offered – or the recommendation was that no interest would be paid to Westpac for the entirety of the business loan, from start - - -

30 So Westpac had to refund the interest - - -?---Yes.

- - - and the bank charges?---Yes.

And the - - -?---And decrease part of the credit card, I think was the interest on the credit card, the business credit card, as well.

35

Right. But the principal amount that had been borrowed, that original - - -?---Yes.

- - - 362 or so thousand - - -?---Yes.

40

- - - dollars was still due?---Yes.

And that had been borrowed by the company?---Well, I suppose, yes.

45 And - - -?---50 per cent myself and 50 per cent my sister-in-law, yes.

Yes. But the company wasn't operating anymore?---No.

And did Westpac tell you or speak to you about whether you needed to repay the principal?---Yes.

5 I mean, in any event, you knew you had to repay the principal?---Yes. I have to repay it, yes.

And did you repay the principal?---Yes, I did.

10 And what did you do?---I had to sell my investment property, not just because of the business loan. I couldn't afford to pay anything and I had to – I was working full-time. I actually had to quit my job, because my mum got very ill; she got encephalitis of the brain and she was in hospital for three months. So I had to spend time with her, so I couldn't work. And the – the letters and the phone calls from everybody wanting money, it just got too much. So I decided to sell my investment
15 property. The other thing was I was not entitled to Centrelink payments, because I owned the investment property. I couldn't access my super, because – even as a hardship case, because I wasn't on Centrelink for six months. So, basically, I said to them, well, you're going to let me starve to death, even though I have got no money. But I decided I had to sell my investment property, just to breathe. My intention was
20 to sell the investment property. I had half a business loan; my sister-in-law had half of the business loan. I sold my investment property for 750,000. I owed \$165,000 on my investment property and \$330,000 on my home loan. My intention was to pay off the investment property, my home loan, and my share, one hundred and – I think it was \$65,000 for my business loan to Westpac. I signed a form to release my
25 property. And on that it said that any surplus funds that I had, meaning the \$165,000, would be put into my everyday savings account, which would have been about 170 something thousand dollars and all my debts would have been paid off, the credit cards, everything. In the last minute before they – Westpac actually would release my property, the day before settlement was due on my property, I get a, email
30 saying no, we are not going to do that. We are going to take 100 per cent owing on the business loan from the sale of your property, which clearly shattered me, because that was not all my debt. So we – unless you come up with a – some kind of proposal to pay off the balance. So my ex sister-in-law sent a proposal to Westpac to pay them \$150 a week. At \$165,000 they, obviously, laughed at that and said no. So
35 they refused. And when settlement happened on my property, they took it all.

Paid off all of the debt?---Paid off all of the business loan.

40 And the \$155 a week, did your sister then offer to pay that to you?---No, she is paying me \$120 a week.

And you made a second complaint to FOS?---Yes, I did.

45 And what was the second complaint about?---That for – the second complaint incorporated the issue about the bank taking 100 per cent of the loan. But, also, when I actually made the complaint to FOS from the date of lodgement, Westpac

were notified that I had made a claim. I was receiving text messages from Westpac wanting money for the payment of my credit card on a weekly basis.

5 And when you make a complaint to FOS, Westpac or the bank is supposed to stop contacting you?---Correct, which FOS advised me of, which I knew from the first case. So when Westpac continually sent me text messages, I rang FOS and explained what was happening, and they got on to them straightaway. And they stopped after that.

10 FOS got on to Westpac?---Yes.

And – and then the text messages stopped?---Yes, they did.

15 How did you find dealing with FOS?---FOS – they're a really good organisation. They were very helpful. Nothing was too much work for them or too hard for them to do. They listened to everything. And, you know, helpful in actually making the claim to start with, giving directions and things like that. And every time I had to ring somebody, they were – they were wonderful. Wonderful people.

20 And FOS found against you on whether Westpac was entitled to take all of the money to pay down the business loan?---Yes.

But they found for you in relation to the collection notices?---Yes.

25 All right?---Well, in the FOS recommendation, it said that Westpac were entitled to take the full money.

Sorry. They were entitled - - -?---Yes.

30 - - - to take that money?---Yes.

That's the first thing?---Because of the – yes.

35 But the second thing is they found against Westpac on the sending of the collection notices?---Yes.

And they – did they make an order in – or a direction in your favour?---Yes, they did.

40 And what was that?---Westpac had to pay me a certain amount for each text that I received.

Right?---It was \$6750 for stress and inconvenience. They also closed my bank account, which they shouldn't have, which they were charged \$250 for, as well.

45 And how did receiving the text messages and contacts – how did that affect you?---It was overwhelming and just stressful. It's the worst time of my life. I didn't want to go through it again. And I don't want to ever go through that again. It's not a nice

feeling when I've always paid all my debts upfront. Bills were always paid. And to continually get phone calls from institutions about where's your payment – when are you going to make the payment is just something that I'm not used to. And it was really hard. I had my kids paying my bills for me – paying my loans for me. That's not what a mother does. That's not what I do. That's not what I've done all my life. I worked hard to get where I was. It's gone. All of it's gone. I still owe money, when I should be retired by now. But I still owe money.

Commissioner, I don't have any further questions.

THE COMMISSIONER: Yes, thank you, Mr Hodge. Yes, Ms Neskovicin.

<CROSS-EXAMINATION BY MS NESKOVCIN [4.24 pm]

MS NESKOVCIN: Mrs Messih, my name is Ms Neskovicin. I am going to ask you some questions on behalf of Westpac?---Yes.

Thank you. Mrs Messih, you say in your witness statement that Pie Face representatives made available to your accountant certain information of the former owners of the Pie Face Werribee shop in the form of a profit and loss statement?---Yes.

And that your accountant provided the profit and loss figures to Westpac or to [REDACTED]?---I don't know if he did, yes.

That was your sister-in-law's accountant that you referred to - - -?---That's correct, yes.

- - - a moment ago?---Yes.

And did you understand that your – the accountant used the profit and loss statements of the former owners to prepare some cash flow forecasts?---He might have. I can't recall.

Can I ask the operator to please call up WBC.404.001.0302. It's an exhibit to Mr Welsh's statement, which isn't in evidence yet, but it should be uploaded.

THE COMMISSIONER: Can I ask where this is going, Ms Neskovicin. If you don't want to answer that with the witness, the witness can leave the room. But to what ultimate point is this going?

MS NESKOVCIN: I want to ask if Ms Messih recognises the document, if she discussed it with the accountant, if she understood that it was the document that was put forward to support the loan application. She might not know.

THE WITNESS: I have seen - - -

THE COMMISSIONER: Let it be all assumed – just a moment. Let it be all
5 assumed that those answers flow in the way you hope they flow, what follows from
that?

MS NESKOVCIN: The – it was the basis on which the loan was assessed. And I
also want to ask in – whether she got advice about these cash flow projections.

10 THE COMMISSIONER: Are you ultimately going to say that FOS got it wrong?

MS NESKOVCIN: There are other respects in which Westpac says FOS got it
wrong, but this might go to matters on which we wish to make submissions,
depending on the findings that the Commissioner – the counsel assisting urge the
15 Commission to make.

THE COMMISSIONER: All right. Go on.

MS NESKOVCIN: Mrs Messih, do you recognise this document - - -?---I have seen
20 the document, yes.

Is that a document that you discussed with the accountant?---I can't recall, to be quite
honest. I have seen it. Whether or not I discussed it with the accountant, whether or
not I discussed it with my sister-in-law, I don't know. But I have seen the document.
25

Did you have discussions with your accountant or did you leave that to your sister-
in-law?---I left most of the discussions with my sister-in-law.

Did you understand from the accountant or the sister-in-law that these cash flow
30 projections were put forward on behalf of Margo, the company that you
incorporated, to support the business loan application?---I don't recall.

Thank you. You were also asked some questions about the renovations at the
shopping plaza?---Yes.
35

The Werribee shopping plaza. And I just want to get the context correct. The car
park that you said was closed around Christmas, that was Christmas 2013. Is that
correct?---I'm not sure what year.

40 Well, the renovations, didn't they start in early 2014?---Yes.

And then they continued for most of 2014?---Yes.

And they're what you described as major renovations?---Yes.
45

And I understood the effect of your evidence to be that it affected the foot traffic
through the centre and, therefore, the number of customers and sales?---Yes.

Thank you. Was there also an issue in about mid-May 2014 where you had another café open next to your kiosk – or near your kiosk which also affected sales?---Yes, it was Jamaica Blue. That lasted two weeks.

5 And then it closed down, did it?---No. No. They were still there, but the effect of them opening only lasted two weeks.

Okay?---A lot of our customers went there, but after two weeks they came back to us.

10

And you mentioned the Pie Face going into voluntary administration - - -?---Yes.

- - - in late 2014. Prior to Pie Face going into voluntary administration, did Pie Face ever stop meeting its obligations to your kiosk under the franchise

15 agreement?---What does obligations mean to you?

Well - - -?---Pie Face weren't very – of much assistance whatsoever. You get in there, you run your business. They tell you what you have to sell. There was no support, there was no marketing done by Pie Face.

20

Did they provide you with advertising material?---Yes, a little – on the front counter, yes.

And they provided you with the pies and pastries and sausage rolls?---We had to purchase those, yes.

25

Yes. But they didn't ever stop doing that?---No.

One final matter, Mrs Messih. You said that your – you were asked some questions by Mr Hodge about repaying the business loan?---Yes.

30

And you said that your sister – you were asked whether or not your sister-in-law had made an offer to pay you back \$155 a week. And I think you corrected that to say the amount is \$120 a week?---That's what she pays me now, yes.

35

So she's trying to repay you her share of the business loan?---Yes.

Thank you. Thank you, Commissioner.

40 THE COMMISSIONER: Yes, Mr Hodge.

MR HODGE: Nothing further, Commissioner. Could the witness be excused.

THE COMMISSIONER: Yes. Thank you for coming, Ms Messih. You're excused further attendance?---Thank you.

45

<THE WITNESS WITHDREW

[4.31 pm]

THE COMMISSIONER: 9.45 tomorrow.

5

MATTER ADJOURNED at 4.31 pm UNTIL WEDNESDAY, 23 MAY 2018

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